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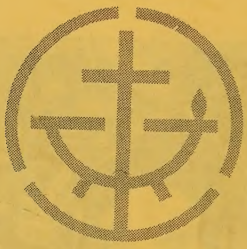

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MARRIAGE AND DIVORCE:

INCLUDING

Religious, Practical and Political Aspects of the Question.

By AP RICHARD. [pseud.]
(M.A. CANTAB.)

LONDON:
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PREFACE.

THE following pages were written about four years ago, and subsequent events show that the public interest of the subject is not by any means diminishing.

One matter, to which the late Bishop of Lincoln called attention more than twenty years ago, has been steadily growing in importance, and will doubtless continue to demand attention with increasing urgency, until it is disposed of and settled upon a sound basis. This is the question of Polygamy, especially in its relation to those other races and nations with whom we are brought into contact in our own colonies and in foreign countries. This question naturally forced itself into a prominent position in the great Conference of Bishops, which has lately been held at Lambeth (in July, 1888). This important assembly, consisting of 145 Bishops in communion with the Church of England, after first considering the question in a Select Committee, ultimately pronounced their united judgment upon it in the following words of their Encyclical Letter:—

> "Polygamy. The sanctity of Marriage, as a Christian obligation, implies the faithful union of one man with one woman until the union is severed by death. The polygamous alliances of heathen races are allowed on all hands to be condemned by the law of Christ." *

* Conference of Bishops, Lambeth Palace, 1888. Published by the Society for Promoting Christian Knowledge; London, 1888. Price sixpence.

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It will be observed that this judgment does not deal with the question on the ground of expediency, but unreservedly declares the principle of Polygamy to be condemned by the law of Christ; and makes this assertion as one which is "allowed on all hands," and is apparently beyond dispute. Now it will be seen in the following pages that we have arrived at a conclusion the very opposite of this: we assert that the system of Polygamy is *not* anywhere condemned in the pages of the Gospel, as a matter of principle, as being essentially opposed to the Law of Christ. When it runs into excess, or when it involves cruelty, neglect, or any other kind of injustice,—so far, of course, it is reprehensible like any other form of intemperance. But this does not imply its condemnation in principle. On this point, therefore, we are directly at issue with the Bishops. The question is undoubtedly one of extreme importance on many accounts; not only as a question of morals for ourselves; a question deeply affecting our relations and sentiments towards those other races of mankind who think differently from us upon the subject; but also, as we have here pointed out, as a question very seriously affecting our use of the Bible itself. If this practice is really opposed to the law of Christ, to the law of God, what are we to think of the great bulk of this Sacred Volume, in which it is so plainly allowed and sanctioned?

We trust therefore that in view of these important considerations, and above all from a high regard for the paramount claims of Truth, the Bishops will not be satisfied to let the question remain where it now stands, resting simply upon their own unsupported assertions. If they can clearly

explain the facts of Scripture in the sense which they assume, it is certainly very desirable that they should do so at the earliest possible moment. In the meantime, we venture to present our view of these facts to the judgment of the Public: believing that, whatever they may be worth, they ought at least to be known and taken into account, in determining this great question.

Another circumstance which has brought the subject of Marriage into considerable prominence during the last few weeks, is the remarkable, and in many cases, the very interesting correspondence which has appeared in the columns of the *Daily Telegraph*, founded originally upon an article in the *Westminster Review* for August, 1888. We shall not attempt in this place to review or criticise this very copious correspondence; but one or two remarks are obvious. First, it shows how widespread is the interest of the subject, and also what great diversities of opinion are held upon it. It shows how complicated is the question, when it comes to be viewed in its various practical aspects; how interminable such a discussion may be. It shows also the fact which, no doubt, has very much startled the world, that there is a party in the midst of us who are prepared to go to very great lengths in the way of Marriage Reform, —even to the extent of virtually doing away with Marriage altogether. But at the same time, while there is, no doubt, a very general admission that the subject does require serious attention and reform in some particulars, yet it is made evident that there is a very decided determination on the part of the public to support the

institution of Marriage in its fundamental integrity; and not to allow any such loosening of the bond as would make it practically dependent upon the mere caprice or passion of the parties themselves. This conservative feeling we desire most earnestly to support: and we believe that the safest and surest way to preserve this, as well as all other valuable institutions, is to open the doors for timely reform, to remove all reasonable grounds of complaint, and especially to clear away all such causes of suffering as are shown to be due to traditional errors or prejudices, and not warranted by the great principles of Justice and of Truth.

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MARRIAGE AND DIVORCE.

CHAPTER I.

I. It is not a light matter to tamper with the Laws of Marriage; to propose any alteration in the laws and principles of an institution which so deeply affects every member of the community. Some persons seem to feel this so strongly that they are unwilling to enter upon any discussion of the subject at all: they think that any such discussion, especially any proposal to relax the restrictions which now exist, can only have the effect of unsettling men's minds; that it will, in fact, prove a direct incentive or temptation to many persons to desire that which ought not to be allowed. Now, whatever reasons may be urged of this nature, we must venture to set up one high, paramount, principle, to which they must all be subordinate: we claim that above all things, the voice of Truth and Justice should be listened to. If it can be shown that any of the laws, customs, or prejudices of the present day, are not really founded upon Truth, or not strictly consistent with Justice, then we claim that this matter should be fairly and honestly considered, and that any alteration or reformation which may be clearly required by these great principles, should be adopted without hesitation, and with as little delay as possible. We claim this from all those persons who as Legislators or politicians take any part in the direction of public affairs; but most of all we claim it from all those who assume to speak as Ministers of Religion,—especially Ministers of the Christian Religion. For this at least is a prominent and unquestionable feature

of Christianity, that it professes to be based upon *Truth;* to be a message from the God of Truth: it repudiates all falsehood, and desires not to be propped up by anything in the shape of a lie: nor can any man be a faithful exponent of this Religion, who places any consideration of expediency or self-interest above the paramount claims of Truth. We desire here, *in limine,* to lay the greatest stress upon this point: for unhappily we are compelled to say that this great principle is not sufficiently understood, or not sufficiently observed, by many persons who profess to act in the name of Christian faith and morality.

II. But however, great and powerful as this argument ought to be, yet it is not merely for the sake of an abstract principle that we hope now to awaken the public mind to a serious consideration of this subject. There are practical evils to be remedied which demand the earnest attention of every thoughtful man; evils of the gravest character, affecting the welfare, the happiness, the lives of thousands of human beings, men, women, and children; aye, and if there is such a thing as future responsibility, we must say also, affecting the souls of men, to an extent of which they are evidently but little conscious: evils pervading all classes of the community, from the lowest to the highest; evils, whose existence cannot be denied, whose existence indeed is not denied; though it would seem that from their very nature, their peculiar nature, and their widespread prevalence, most men are afraid to grapple with them, and would rather leave them alone. But we venture to say they cannot be let alone any longer. Prostitution, and the unspeakable evils of various kinds which belong to it; the terrible physical suffering and disease; the social mischief, domestic unhappiness, individual misery, degradation and pauperism; and the moral effects, the utter ruin of man's higher, spiritual, nature; the many cases of infanticide, in various forms;

not only those which are brought to light, but those others, probably much more numerous, which are accomplished in secret; the pitiable tales of suicide and despair: these are things which cannot be altogether ignored in these days of publicity, and which cannot be passed over in silence, without some efforts to remedy them, on the part of those who still retain any feelings of humanity and pity.

And there are other evils also, of a less public or notorious character, yet which, in a moral point of view, are scarcely less fatal than those above mentioned. How many hundreds, or even thousands of men are there, who have been drawn or driven into clandestine connexions, who are doing something which they are afraid to acknowledge to the world, and are therefore living a life of daily deceit and falsehood? This is evidently a serious offence against all the principles of honour and morality, apart from any special tenets of religion. But viewed as a question of religion, especially by the light of our Scriptures, it is seen to be a most capital offence against the laws of God, a wilful and persistent sinning against the conscience, the most dangerous thing of all for a man's soul. Yet is this clearly a matter which is not generally looked upon in this very serious light: it is done too commonly,—nay, it is done so commonly by men who in other respects are deemed honourable, that the question is forced upon us whether the *primâ facie* estimate of this matter is the true one. Must we believe that all these men are living in a state of deadly sin, as most preachers would call it, with an imminent danger of eternal ruin before them? Or is there indeed some other view of the case possible, some hope, some excuse for them, which is not generally understood?

III. But yet again, there is another class of cases, altogether different in character from any of those above

referred to, one that is apparently much less thought of, in any public discussions of this subject, but one which suffers a good deal of injustice and hardship under the present *régime*, and is certainly entitled to much consideration, and to some practical measure of relief. There are many persons who patiently and conscientiously submit to the existing state of things, the written laws of the State, or the customs of the day, but who are thereby compelled to endure much distress,—sometimes very serious loss of health and happiness,—through the restraints imposed upon them; restraints which may be due partly, perhaps, to the artificial state of society in which we live, and partly to a mistaken or perverted interpretation of the words of Scripture; but which are certainly in direct antagonism to the constitution and laws of Nature.

Now, this is a very serious matter. If we attempt to establish any laws of our own in direct contravention of the great laws of Nature, we must inevitably produce mischief of some sort or other; we shall do more harm than good. The laws of Nature are ordained by a Power which is certainly much *wiser* than we can ever pretend to be; a Power which has created all the parts of this wonderful universe in their due proportions and relations to each other: and the highest wisdom that we can hope to attain to is to *understand* the principles on which this great Power carries on its work, and to follow them out faithfully, as far as we are able to do. And not less may we be assured of the *goodness* of the Creator, even though there may be some clouds occasionally which hinder us from seeing his goodness in its full light. And yet, in spite of these obvious truisms, there are some persons, and even some with the best intentions, who appear to aim at improving upon the laws which this great and good Creator has impressed upon the constitution of the world; not merely improving the condition of the world by the natural and

proper methods of human progress, by utilising and developing the forces of Nature; but improving upon them, as they think, by positively setting them aside, and endeavouring to defeat them in some of their most fundamental operations. The folly and presumption of such a course are so manifest that it seems incredible that any men of sense, especially any men who profess to have a sincere regard for Religion and the Author of Nature, should be guilty of it. Nevertheless, in relation to this great question of Marriage, the history of mankind shows too clearly that such ideas as we are now denouncing have frequently prevailed, in various ages of the world, and are still in operation to a very considerable extent, even in the present day, and in our own country.

IV. Marriage, the union of the sexes, is a matter of such vital and universal importance, not only in regard to the human race, but in the whole economy of animated nature, that any undue interference with the proper exercise of this function, any needless or arbitrary impediment thrown in its way, clearly becomes liable to the charge which we are now making; it is a presumptuous attempt on man's part to be wiser than his Maker. Any disparagement of this state, as if it were wanting in perfect holiness or morality,—doctrines which have actually been preached in the name of Religion, and which are still preached in some quarters,—any sentiments of this kind we say are nothing less than a direct insult to the wisdom, the goodness, the holiness of the Creator. Yet is it clearly to the influence of such doctrines and principles that many of the restrictions which now prevail among us are due; and to these also, as we firmly believe, a large proportion of the evils that we have referred to. And it is with this strong conviction that we now earnestly invite public attention to this subject. Whatever difficulties there may be in dealing with it, the worst

and weakest course of all is to shut our eyes to them, to be afraid of looking at them; or to "pass by on the other side," simply because we do not ourselves suffer any personal distress or inconvenience in the matter. And not less than this moral cowardice or selfish indifference which shuns the discussion altogether, we must deprecate one other thing which no doubt prevails very widely and very strongly in reference to this particular subject; and that is *prejudice;* the strong traditional sentiments which men have derived from past generations, have held all their lives, and looked upon as part of their religion. We may perhaps have to say some things which may appear contrary to the received opinions of the day. Every writer, and every reformer, of course, if he is in earnest, thinks that he has some new ideas to present, or some popular errors to correct; and if any progress is to be made in general knowledge and civilisation, such ideas must be listened to, and judged according to their merit, according to their truth. But this at least we venture to promise, that, whatever may be the value of our remarks, we shall at any rate make no assertions, and bring forward no arguments, so far as we can help it, that are not supported by plain facts, or that are not perfectly consistent with Truth. And Truth, whatever it be,—Truth is at least always entitled to be heard: and all the more so, perhaps, when it is a truth which is not generally recognised.

V. There are many points in which we have reason to believe that our present laws and customs in regard to Marriage are, more or less directly, a source of much mischief and injustice, and in which therefore they require amendment. In some cases they place unnecessary impediments in the way of marriage, which hinder men from entering into this state under lawful conditions, and so virtually compel or tempt them into illicit forms of inter-

course: in other cases, they help to defeat the objects of marriage itself, perpetuate evils which may have unhappily arisen, and withhold the remedies which are required both by Nature and Religion. As to the former class, it is perhaps chiefly the customs and sentiments of Society which are in fault, more than any definite laws of the Statute Book. But in the latter class, affecting marriages which have already been contracted, the actual state of the Law on the subject is chiefly to be considered: and here, although some great advances have indeed been made within the lifetime of the present generation, yet we venture to say there is still some further amendment required.

The full consideration of this subject in all its bearings would require a very considerable expenditure of time and research, bringing before us many grave difficulties,—difficulties, many of which are inherent in the subject itself, and still more perhaps are produced by the prejudices, the misconceptions, and even the private and personal interests involved. This task therefore in its full extent is more than we shall undertake to accomplish on the present occasion. For various reasons, we propose to limit our observations in these pages chiefly to those cases where marriage has already taken place, but where it has failed to produce the happiness or the benefits for which it was designed; where it has become, to one of the parties, at least, if not to both of them, a burden and a bondage, rather than a blessing. Such cases, there can be no doubt, are in truth by no means uncommon, though they do not often come under public notice. In the present state of the Law, when the facts are not sufficient to justify a legal separation, it is generally supposed to be the wisest course for the parties concerned to keep their domestic troubles to themselves, and to put up with their difficulties as best they may. Now, while we would certainly not deny that to a reasonable extent this course of patience,

forbearance, and self-restraint is not only the most prudent, but is in fact the true path of moral duty, yet we do not hesitate to say that it may sometimes be pushed too far : or rather perhaps that that which appears outwardly to be a state of forbearance has in reality degenerated into a mere sullen tolerance or indifference, from which all feelings of love, or even of true patience, have long since, and hopelessly fled away. And when this has happened, then it appears a mere self-deception, an abuse of the true principles of marriage, and a waste of life's precious time and energies, for two persons to be tied together by a mere legal bond, and nothing more. If by any means, by the intervention of friends or otherwise, a sincere and honest reconciliation can be effected, well and good : this is, no doubt, the best result of all, the result which should always be aimed at. But it is no use shutting our eyes to the fact, that in many cases this complete reconciliation is past hope ; either by the fault of one or of both the parties concerned. In such cases, is it absolutely necessary that one of them, or both, should be utterly sacrificed for the rest of their lives? Is this absolutely required on any grounds of religious principle, or of moral and social expediency? This is one of the questions which we have to present for serious consideration, and which we think must be answered in the negative.

VI. And in answering this question, there is this important point to be considered. As a matter of personal duty, it may be all very well to say that a husband or a wife placed in such painful circumstances ought to endeavour as far as possible, to exercise forbearance and patience, and in short to submit to the difficulties of his position, however great they may be. It may be a high moral duty sometimes for a man or a woman to submit to martyrdom, even to the last extremity. But this is not the question which concerns *us*,

the outside public, especially those who are responsible for the Laws which appear on the Statute Book. If the parties themselves do not feel it to be their duty, or even their inclination, to continue in the bond of marriage, the question is, How far is the public authority of the State justified or required, on grounds of public policy, to insist upon the continuance of their union; to subject the one who is innocent perhaps to the tyranny, the ill-usage, or even the ill-temper of the other? To a certain extent, and under certain specific circumstances, the Law does now give them relief by means of a "Judicial Separation": but this is only a very partial measure of relief; it saves the innocent party from the immediate effect of the other's misconduct; but only at the expense of being excluded from the benefits of the married state altogether; so long as his partner is still living, and is not fully divorced, it does not allow him to enter upon any other form of lawful marriage. The question therefore is whether or not this relief may be yet further extended; whether those causes which are now held to warrant a "judicial separation," if they have been in existence for a considerable length of time, and are not likely to be removed, should not be accepted as sufficient grounds for divorce "*a vinculo matrimonii*," with liberty of remarriage. It is a question which clearly requires careful and serious consideration, on public grounds, as well as in the interest of the parties themselves. There are, no doubt, weighty reasons of a public nature, which forbid us from making the facilities for divorce too great or too common. Marriage must always be looked upon and understood to be a serious matter, not lightly to be undertaken, nor yet lightly to be dissolved. At the same time it is equally clear that there is no advantage in making it a burden such as men cannot or will not endure. The subject may indeed require to be considered seriously, that is, with all due cautions: but at least we say, *it does require to be considered.* And further-

more, it requires to be considered by the light of those principles which are now clearly recognised and irrevocably established among us, but which were very much or altogether ignored in former days, when the present laws upon the subject were accepted: these are the principles of religious liberty and the rights of conscience. These are things the importance of which in the true interests of religion cannot now be neglected: they must not be interfered with by the State on any grounds of doubtful authority, for any reasons that cannot be clearly established, or to any extent more than is absolutely necessary for the public good.

CHAPTER II.

I. The Laws of England in relation to Marriage and Divorce have undergone some very important changes during the last fifty years. In the year 1836, by the Registration Act of 6 *and* 7 *Will. IV. cap.* 86, the civil character of this contract, independently of its religious aspect, was clearly recognised. Previous to that time, there was no legal provision for the marriage of any persons in the kingdom, otherwise than by the agency of the Established Church; and virtually upon the assumption that all persons who came to be married were members of that Church, and not only desirous, but qualified, to receive at her hands the very solemn benedictions contained in her Marriage Service. It is perhaps hardly necessary, in connexion with our present subject, or at this time of day, to point out at length the grave fallacies upon which this state of the law rested. Whatever sanctity may be added to the institution of marriage by the principles of the Gospel of Christ, yet the institution itself has existed in some form or other, as part of the law of Nature, among all nations of men, not only anterior to the preaching of Christianity, but altogether independently of this Religion. And therefore to make the validity of a marriage dependent upon the rites of the Church, however excellent those rites and ceremonies may be for its own members, is an obvious injustice and impropriety, especially in any community like ours, consisting of a great variety of persons of different national origin and of different creeds, and in which every diversity of religious opinions is professedly tolerated. As to the scandal occasioned within the Church itself, when everybody who desired to be married was compelled to come and take part

in those solemn forms of worship, men who perhaps never entered the doors of a church on any other day of their lives, men who knew nothing or believed nothing of the acts of faith and prayer in which they were supposed to engage, men who were often barely sober enough to get through the service without an utter break-down : that the Church herself should tolerate these things, and even think it a grievance when this necessity was put an end to, by allowing marriages to be celebrated elsewhere : all this is a matter which most nearly concerns the Church herself, and those of her Ministers who are personally responsible for the maintenance of her own internal purity and discipline. At the same time these are facts which cannot be altogether ignored by the rest of the world : they show, among other things, the strange degree of prejudice and pertinacity with which even good men will cling to traditional ideas in matters of religion ; ideas, which indeed at one time were almost universally accepted, but which are now still more universally rejected.

This state of the Law however which confined the process of marriage to the official action of the Established Church, was terminated by the Statute above mentioned in 1836 ; which made provision for the celebration of marriages under the authority of the District Registrars, in any part of England. By this Statute, while the Church is left at full liberty to celebrate marriage, just as before, among all who desire her offices for this purpose, it is left open to other persons to make it a purely civil contract, either without any religious ceremony at all, or with the addition of any rites which they may desire to observe in the presence of their own co-religionists. That this is no more than a matter of simple justice, and consistent with all religious truth and liberty of conscience, is plain enough, and will not now be disputed, we suppose, by any sane man in the kingdom. The only wonder is that such a truth should have

been so long disputed and resisted; that it should only have been acknowledged,—in modern times, at least,—within the lifetime and the memory of the present generation.

II. The change which took place twenty years later on the question of Divorce was no less fundamental in its character than that of making marriage a civil contract. Before the year 1857, it may be said that Divorce, in the full sense of the dissolution of an existing lawful marriage, was no part of the regular Law of this kingdom. Decrees of divorce, or separation *a mensâ et thoro*, were pronounced by the Ecclesiastical Courts, and also decrees of divorce *a vinculo matrimonii;* but in this latter case, the decree was essentially one of nullity of marriage; that is to say, when some marriage which had been formally celebrated was pronounced, for certain reasons, to have been null and void from the beginning. But these Courts of the Church had no authority, and it was contrary to their principles and precedents, to dissolve a marriage which had once lawfully subsisted, for any cause whatever. On this point it may be well to quote the words of the greatest legal authority of modern times, Sir William Blackstone. Writing in the year 1765, he says:—

> "There are two kinds of divorce, the one total, the other partial; the one *a vinculo matrimonii*, the other merely *a mensâ et thoro*. The total divorce, *a vinculo matrimonii*, must be for some of the canonical causes of impediment before mentioned; and those existing *before* the marriage, as is always the case in consanguinity; not supervenient, or arising *afterwards*, as may be the case in affinity or corporal imbecility. For in cases of total divorce, the marriage is declared null, as having been absolutely unlawful *ab initio*.
>
> "Divorce *a mensâ et thoro* is when the marriage is just and lawful *ab initio*, and therefore the law is tender of dissolving it; but for some supervenient cause, it becomes improper or impos

> sible for the parties to live together ; as in the case of intolerable ill-temper, or adultery in either of the parties. For the Canon Law, which the Common Law follows in this case, deems so highly and with such mysterious reverence of the nuptial tie, that it will not allow it to be unloosed for any cause whatsoever that arises after the union is made. And this is said to be built on the divine revealed law ; though that expressly assigns incontinence as a cause, and indeed the only cause, why a man may put away his wife and marry another. The Civil Law, which is partly of pagan original, allows many causes of absolute divorce ; and some of them pretty severe ones : . . . but among them adultery is the principal, and with reason named the first. But with us in England, adultery is only a cause of separation from bed and board." . . . . "However, (he adds,) divorces *a vinculo matrimonii*, for adultery, have of late years been frequently granted by Act of Parliament." *

Now this latter fact is important and deserves attention. On the one hand of course it confirms our assertion that absolute divorce was no part of the regular law of England. An Act of Parliament overrides or supersedes all previously existing laws on the subject with which it deals. Each Divorce Bill which came before Parliament had respect only to the individual parties concerned, and established no general custom or precedent : and in short, the very exceptional character of the proceeding itself, on the well-known principle that *exceptio probat regulam*, was the clearest proof that the desired result could not be obtained by any ordinary process of the common law. But on the other hand, this proceeding showed also that in the judgment of the Legislature this relief was sometimes absolutely required as a matter of justice. It is not to be supposed that the high authority of Parliament,—the Commons, the Lords Spiritual and Temporal, and the Crown,—would ever be given to a process which they believed to be altogether wrong in principle, contrary to the principles of the Established

* Blackstone's "Commentaries," Book I. Chap. 15.

Religion of the Country, or the interests of morality: or, at any rate, whatever may be thought of the integrity of Parliament in some periods of the last century, such a practice would certainly not have been continued up to the middle of the present century, unless it were supported by some very clear and cogent reasons of justice, expediency or necessity.

But exceptions to a rule, when they come to be multiplied pretty frequently, show that there is something in the rule itself which is of questionable truth or propriety. And so it was evident, when people once began to think for themselves that there could be no true justice in granting a privilege like this, so frequently and with so little scruple, to the higher and wealthier classes, and denying it altogether to the rest of the community. If divorce was allowable at all, as a matter of principle, it was evidently necessary that the principles on which it ought to be allowed should be duly examined and declared; and that when so declared, they should be extended, with all due cautions, but with impartial justice, to all classes of the people alike. Accordingly, in 1857, the Act of 20 and 21 Vict. c. 85 (the Matr. Causes Act) established a Court for the determination of Divorce and Matrimonial Causes; it transferred to this Court the jurisdiction previously exercised by the Ecclesiastical Courts in these matters; it declared for what causes sentence might be given for a "judicial separation," which was to take the place of the former divorce *a mensâ et thoro;* and also upon what grounds the Court might decree a marriage to be dissolved, with liberty to the parties to marry again, "as if the prior marriage had been dissolved by death." (Sect. 57.) This was clearly a great innovation upon existing usages; and as such it was strenuously resisted, principally by the Clergy of the Established Church, and their supporters. And their opposition was maintained, very conscientiously, no doubt, chiefly under the impression that even this

measure of liberty was contrary to the teaching of Scripture, and contrary to the fundamental principles of Marriage itself, as set forth in those sacred pages.

III. Now we are prepared to express a very strong opinion that some further degree of relaxation of the bond of marriage, even beyond that which is conceded by the present laws of England, is required in the interests of justice, social expediency, and true morality, and is not inconsistent with the declarations of revealed Religion. And as these opinions will no doubt be challenged in various quarters, we propose in these pages to state plainly the grounds on which we rest them; and first, and most especially with reference to the testimony of Scripture. There are of course several points open to controversy in regard to this matter: it is a grave question, which must not be generally assumed as settled in the present day, what is the real authority of the Bible itself, whether it is a Book of entirely human composition and authority, or entirely divine, or a combination of the two. And there are other questions, how far the State, even if it accepts the Bible as divine, is justified or is in duty bound to enforce its principles upon those who do not so accept it. But before touching upon any of these points, some of which would be beyond the scope of our present enquiry, the first question to be determined is the actual teaching of the Bible itself. This, the supposed teaching of Scripture, especially of the Christian Scriptures, is clearly the fountain from which our Marriage laws have been derived: from this original source, first through the ancient Canon Laws, and thence through the later Canons and teaching of our own Church, have come not only the positive laws by which, as we have seen, our Ecclesiastical Courts were governed, and the principles of which have been to a large extent incorporated in the newly established Matrimonial Court, but also the strong sentiment which even yet

prevails so generally as to the indissoluble character of the marriage state. And this, therefore, is the first point that deserves attentive consideration: and, as we have before intimated, it is a point on which we especially claim an honest and impartial judgment from all those persons who profess a serious regard for religious truth and religious principle; above all from the lawful Bishops and Rulers of the Church. Truth, before all things, must be the polestar, the guiding principle, of every true and faithful Minister of the Gospel of Jesus Christ.

IV. It might appear, at first sight, a somewhat bold and presumptuous thing for any private individual to impugn the doctrines which have so long, so generally, and so strongly prevailed in the Church on this important subject. We certainly should desire to avoid any just charge of undue presumption in such a matter; but at the same time we shall not be deterred by such feelings from stating our view of the case with perfect candour; and we are fortified in this course by several preliminary considerations. In the first place, the arguments which we are about to put forward, though perhaps they have not been often pressed upon public attention of late years, yet they are in truth by no means novel or unprecedented: they have indeed been very forcibly advanced by many other writers before our day, some of them men of much distinction and high character, such as Martin Bucer, in the time of Edward VI.; and John Milton; others, men of less note, but yet of marked learning and ability. But a more important consideration is the notorious and indisputable fact that the Church herself, not only great Branches of the Church, like the Roman Communion, but for many ages apparently almost the whole of Christendom, has gone astray from the plain teaching of Scripture on the subject of Marriage. The vows of celibacy, the absolute prohibition of marriage to the

Clergy, and the disparagement of the married state generally, these sentiments which have been urged with so much persistence, so much authority, and so much practical effect, especially by the Church of Rome, are not more repugnant to the great principles of Nature than they are to the emphatic declarations of Scripture; and one of the results inevitably produced by such perverted doctrines is to detract most seriously from the authority of the Church herself, and to give very strong encouragement to any persons to dispute her dogmas on all questions connected with the institution of Marriage.

But above all things, in our present undertaking, we rely with confidence on the plain facts of Scripture itself, and an honest desire to advance no arguments, and draw no conclusions beyond the point which may seem to be fairly and justly warranted by those facts. There are some difficulties, no doubt, in the Bible, in reference to this question, as there are very serious practical difficulties inherent in the subject itself: such difficulties, when we cannot fairly solve them, we shall be prepared candidly to acknowledge. But when the facts are plain and unquestionable, then we claim also a similar candour, the same honest acknowledgment, from all other persons who may be opposed to us.

CHAPTER III.

I. In proceeding to examine the testimony of the Bible with regard to any question of social morality or propriety, such as any of the various points connected with the institution of Marriage, it is necessary to understand the peculiar features of this Book, or this collection of sacred writings, which we speak of as The Bible; and to bear in mind the relative degrees of authority and of relevancy with which its various parts may be applied to ourselves in the present day. It is well understood that many of the laws and ordinances prescribed for the Jews in the earlier periods of sacred history were of a local and temporary character; they were never intended to be binding on the whole race of mankind; nor even, as to some of them, upon the Jews themselves in perpetuity. And many of these institutions are either directly or indirectly set aside by the principles of Christianity, and their observance is declared to be no longer required, at any rate as a matter of duty, by Christians. But although this is undoubtedly true of many parts of the Mosaic Law, it does not hold good with all the precepts of that Code. It is true as regards the rite of Circumcision, the sacrifices, the seasons, and the forms of worship prescribed to that nation,—matters of a ceremonial and typical nature; it is true, also, no doubt, as regards many of the social and political regulations by which they were governed, some of them intended for their own social well-being, some of them perhaps purely for sanitary reasons, some to keep them distinct and separate from other nations of the earth. But on the other hand, many of the laws given to them are clearly not of this temporary character: they embody great principles of religion, essential elements

of that justice, righteousness, and purity, of that faith, obedience and love, which we believe Almighty God intended to teach to all mankind, and for which purpose he taught them specially in the first instance to the Jewish people. Such great and universal principles are contained notably in the precepts of the Decalogue; and there are certainly many other laws and principles embodied in the Mosaic Writings which bear the same fundamental and permanent character.

In looking therefore at any laws, customs or examples recorded in the Books of the Older Dispensation, we say it is necessary to keep this question in mind, and to ask whether the particular precept or principle before us is of a temporary or a permanent character; whether it belongs only to a past age, and is of no further value to ourselves, except as a matter of history; or whether it is still something which we may take for our guidance, something which, if not a positive law to us as Christians, is at least an indication of God's own will and pleasure.

And these observations apply very clearly, and with especial force, to all those facts concerning marriage which are recorded in the Old Testament. Some of those facts, and even some of the laws given on this subject, were, no doubt, of a purely local and temporal significance; others again touch upon fundamental principles, which are part of God's eternal Law, and which are as necessary for us to observe, as for the Jews or any other family of men. We believe it is the neglect of this great principle of discrimination which has led many men, even learned divines, to adopt false views of this important question, views which are not consistent with the general purport of Scripture, and which have led to so much practical mischief in the world. Or it may be more correct to say,—inasmuch as the principle itself is so well known, and cannot be altogether forgotten by any thoughtful writer,—it may be that the

controversy between us turns chiefly upon this point, the right appreciation of the various facts with which we have to deal: how far shall we assign to each one a merely temporary value, how far shall we take it as expressing essential principles?

II. The subject of Marriage, including the various important points which immediately belong to it, occupies a prominent place in the pages of the Bible. This is only what might be expected in such a book, in reference to a matter which not only so widely and universally, but which also so deeply and keenly affects the whole human race, which touches some of the most powerful springs of human life and action. Indeed any Book which professed to give an account of the origin and constitution of mankind, and to declare the laws and principles which their Creator requires or desires them to observe, would hardly maintain its claim to be a direct message from that Creator, if it did not make known his will on this subject with reasonable clearness and certainty.

The first point to which our attention is naturally directed, both by the order of events as related in the sacred history, and by its own intrinsic importance, is the general character of the marriage relation itself; whether it is to be considered as altogether good and holy; or whether, apart from any unlawful abuses, it is, even in its most legitimate form, in some degree sinful, or inconsistent with the highest excellence and virtue that man can properly aspire to upon earth. And if this question should appear to some persons simply idle or irrational, as if there could not be two opinions on such a matter, we must remind them again of what we have already observed, that the sentiments of mankind have not always been uniform on this point; that there have been philosophers and preachers in old times who have positively and directly disparaged this state

of Marriage, have absolutely forbidden it to their disciples as something incompatible with holiness; and that these sentiments are still preached and received in our own day to a very considerable extent. On this point, without referring at length to the doctrines of the Manichæans, Montanists, and other sects in the primitive ages of the Christian era, it may be enough to quote the declaration of the great Council of Trent (A.D. 1545-64):

> "If any one shall say that the state of marriage is to be preferred to the state of virginity or celibacy, and that it is not better and more blessed to continue in virginity or celibacy than to be joined in matrimony, let him be accursed, (anathema.)" Sess. xxiv. 10.

This first question then, as to the true character of Marriage, so far as it is declared in the pages of Scripture, is not by any means idle or superfluous, but is in truth one which deserves to be very fully and carefully examined.

III. The account given in the Book of Genesis of the original institution of Marriage, with the separate formation of Eve from the body of Adam, is certainly very remarkable; and has naturally given occasion for some scoffing on the part of those persons who will insist upon taking every word of the Bible quite literally, or else rejecting it altogether. It is not our business here to enter upon a lengthened disquisition on this point, how far this account is to be interpreted strictly, to the very letter, or how far it may be reasonably understood, like other parts of the Creation narrative, as embodying some real elementary truth under such terms as would convey some corresponding ideas to the minds of men in former ages. For the present we can only assume that there is some fundamental truth contained in this history, some creative principle, perhaps, veiled

more or less in words of human language, and adapted as far as practicable to human intelligence.*

But the first point which practically bears upon the question before us is the statement of this broad fact:— That Almighty God in the first instance created Man alone; and having left him in that condition for some period of time, (which is not precisely defined,) said, "It is not good that the man should be alone; I will make him an help meet for him." It is not necessary here to suppose that the Creator *changed* his plan, or discovered by experiment, as human artificers do, that his original design was not perfect: the whole process of creation, as is clearly indicated in the sacred narrative, and as our latest researches abundantly lead us to believe, was progressive, was especially a system of evolution or development of some kind or other, from one stage to another: and it is quite in conformity with this principle that in the human race, and possibly in other races too, the male† should be created first, and the female produced by development from his body afterwards. At any rate, in the case of man, whether with regard to his physical, his moral, or his social constitution, it was not good that he should be alone, without his natural partner. And therefore the Creator produced a helpmate for him, a woman, and brought her unto the man to be his wife: "Male and female created he them." And furthermore, "God blessed them, and God said unto them, Be fruitful and multiply, and replenish the earth, and subdue it." And again, after

* Suppose for instance, that, agreeably to the modern theory of evolution, one of the earliest stages of humanity was something analogous to what we know of the genus called *Diatomaceæ*, with their peculiar system of propagation, by subdivision and conjugation: might not some process of this kind be embodied in those expressions of *Genesis* ii.? We do not of course propound this as a definite theory, but only suggest that *there may be* some such truth underlying the words of Scripture. The points of analogy are at least very curious.

† Or perhaps, as some suppose, an hermaphrodite animal.

this work was completed we are told that "God saw everything that he had made, and behold, it was very good."

Now these declarations are clear enough, and leave no possible room for doubt or dispute upon the question before us. It is the positive and emphatic assertion of the Bible that the union of the sexes in marriage, with the command to be fruitful and multiply, is God's own ordinance, and one which was given to them as a good thing, a needful thing, and a blessing. The point to which we have here to draw special attention in regard to these statements is that they are clearly of a universal and permanent character, not merely of local or temporary application: they express fundamental principles, which are of vital interest and importance to all mankind; which are unchangeable and eternal; which, at any rate, will be in force as long as human nature itself shall last.

IV. After this primary question as to the intrinsic character of the marriage relation itself, the next point of importance is in reference to the conditions attached to it: what are those conditions under which it is lawful, on the one hand; and what are those which are forbidden on the other? This is evidently a question of fundamental importance in the interests of true religion, morality, and the welfare of the human race. And here again we shall see that there are some principles set forth in these early portions of the Sacred Volume, which are clearly of an essential and general character: some things are condemned as offences against the laws of marriage, offences not merely against the Jewish or any other local enactments; but offences against God's universal Law: and so also, other things are allowed in such a way that we must consider them to be *not* contrary to this divine law, but allowable to mankind generally. On these points, however, the histories of different nations of the earth have exhibited considerable

diversities of practice, and the sentiments of mankind are not by any means uniform on the subject, even at the present day. It will be desirable therefore to note carefully what the testimony of Scripture really is in reference to these matters; especially as we are prepared to challenge some of the commonly received traditions and prejudices of the day.

(1.) The first great crime against the laws of Marriage which is frequently mentioned in Scripture is that of adultery; and this, as we shall see, while it is always condemned most clearly and most severely, is condemned, not as being an offence merely against the national laws or precepts of the Jewish Code, but as an offence against the principles of marriage generally. It is necessary however to observe that in the Books of the Old Testament, the crime of adultery is restricted to a more limited sense than that in which the term is generally understood in the present day: it is there always employed in strict conformity with the definition given of it in the laws of Moses, as in *Leviticus* xx. 10:—

> "The man that committeth adultery with another man's wife, (even he that committeth adultery with his neighbour's wife,) the adulterer and the adulteress shall surely be put to death."

It does not therefore apply to the sexes conversely; a distinction for which, as we shall presently see, there is a definite and sufficient reason.

The first place in which this offence is taken notice of is on the occasion of Abraham's visit to Egypt, (Genesis xii. 11,) when he allowed his wife Sarah to pass for his sister; and when Pharaoh, the King of Egypt, being ignorant of her true position, received her into his house, and would have made her his wife. He was stopped from doing this, we are told, by the plagues which God sent upon him, by means of which he was made acquainted with the true facts of the

case. From this narrative it is clear that the offence of taking another man's wife was one that was perfectly well understood in those days, although no definite revelation or law of God on the subject is recorded previous to that time: and it was understood as a general or universal principle, not confined to the family of Abraham, or any other particular race of men. Precisely the same circumstances happened again a few years later, when Abraham sojourned in the land of Gerar. (*Genesis* xx. 2.) Here also we find Abimelech, the King of Gerar, preparing to do the same thing as Pharaoh, not because he was ignorant of the crime of adultery, but simply because, as in the former case, he was ignorant of Sarah's position,—that she was "a man's wife." There is however in this latter story a fact stated which is not mentioned in connexion with the previous case. Abimelech had already a wife of his own, and also maidservants, that is probably, concubines. But no censure is passed upon him on this account, that he should think of taking Sarah in addition to his own wife. "In the integrity of my heart and innocency of my hands, (he said,) have I done this. And God said unto him in a dream, Yea, I know that thou didst this in the integrity of thy heart; for I also withheld thee from sinning against me: therefore suffered I thee not to touch her." From this it appears that polygamy was not only practised in those days, but that, so far as the authority of this narrative goes, it was not condemned by Almighty God himself.

There are many other references to this sin of adultery in the subsequent parts of the Old Testament, both in the Mosaic Laws, and in the Historical Books: and among others, the notable instance of David's sin with Bathsheba is a striking evidence of the heinous character of this offence in God's sight. But in all these records it will be seen that the crime is denounced as *a matter of principle;* that the judgment pronounced is no sentence of merely temporary

significance, but is one of those things which are truly written for our own admonition and learning, "upon whom the ends of the world are come." (1 Cor. x. 11.)

(2.) Fornication and other sins of uncleanness are also clearly condemned, and generally as things which were sinful and abominable before the Lord; sinful in their own nature, sinful at all times, and in whatever nation they might be found. It was for such things as these that God was angry and punished the people of Sodom, and the nations of Canaan: and these judgments, as well as those upon the Israelites in the wilderness, were also examples for us, "to the intent that we should not lust after evil things, as they also lusted."

Unhappily, these things which are here so clearly and directly condemned in the pages of Scripture, as being altogether contrary to the fundamental laws of the Creator, —not only are they very commonly done among us, and without any serious protest, but they are even defended by many men, as something which can't be helped, something which in the present state of Society is even necessary and excusable. We say there must be clearly something wrong here. If these things are really denounced as crimes by the supreme Law of God, they ought not ever to be forced upon mankind, or tolerated as venial and excusable errors. Is there indeed any social pressure which makes such things almost unavoidable amongst us in the present day? It is a very serious question, and demands the earnest and urgent attention of all those who are most deeply responsible in the matter, responsible for the laws, the principles and the sentiments which prevail on this great subject of Marriage.

CHAPTER IV.

One point which is very conspicuous throughout the pages of the Old Testament, in connexion with the laws of Marriage, is the practice of polygamy, which is there so frequently mentioned. This is especially one of those points on which, as we have said, great diversity of sentiment and practice has prevailed among different races of mankind: and it is also clearly a question of a fundamental character, whether or not it should be allowed to a man to have more than one wife at a time. It is a question which is to be looked at as *a matter of principle*. Either *it is*, or *it is not* permitted by the law of God; either *it is*, or *it is not* consistent with the institution of marriage, and the social constitution of mankind: either it is right or it is wrong in itself, independently of time and circumstances, of race, climate, or country. If we find that Almighty God ever distinctly gave his sanction to this proceeding, especially among that nation whom he selected for the purpose of making known his laws and his righteousness, then we cannot suppose that it was fundamentally wrong or sinful in its own nature: it may not be considered expedient, especially with regard to the present state of society among ourselves; it may not be so conducive to domestic peace and happiness as monogamy; it may be liable to great abuses: but at any rate, if God does not condemn it altogether and absolutely, in the pages of the Bible, it would be very presumptuous and inconsistent in us to pronounce any such sweeping judgment against it, while we profess to take that Book as his own revealed Word.

The facts recorded in Scripture on this point are suffi-

ciently numerous and clear to leave this question free from any uncertainty.

I. Passing by some examples of minor importance, such as that of Abimelech, mentioned above, we notice first the very prominent instance of Abraham himself, the Head and Father of God's chosen people. At the suggestion of his wife, Sarah, and during her own lifetime, he took to him as a secondary wife, or concubine, her maid-servant, Hagar, (Genesis xvi. 1;) and by her he had a son born to him, whom he named Ishmael. He did this clearly not under any temptation of lust, not with any idea that he was doing wrong, but with the express motive of obtaining issue by her, and accomplishing, as he thought, God's purposes and promises to him of a numerous offspring. Now, if polygamy is in its very essence and principle sinful, a breach of God's fundamental law of marriage, then of course this act of Abraham was an error, more or less blameable according to the degree of knowledge which he had received of God's law. It might be that he sinned in ignorance, as Abimelech was about to do: it might be that he sinned knowingly and wilfully, even as Adam did in Paradise; for we are not to suppose that even Abraham was wholly without sin. On the former of these hypotheses, that he acted in ignorance of the divine law, can we believe that God, who so carefully interfered to prevent the crime of adultery on the part of Pharaoh, and again of Abimelech, would altogether neglect the same care in regard to his more favoured servant Abraham,—if, that is to say, the union with Hagar was really a sin of adultery in his sight? The other hypothesis, that Abraham sinned wilfully herein, is still more incredible, and inconsistent with the whole tenor of the sacred narrative. There is not a word to be found in the whole of this history,—which relates so many occasions of God's special and personal communion with this great Patriarch,—there is

not a single word in the whole Bible, from beginning to end, which implies that the Divine Being was in any way offended with Abraham's conduct on that occasion, or condemned it as a sin.

But not only this, the whole story of Hagar is declared by St. Paul, in his Epistle to the Galatians, to contain a great allegory, a typical foreshadowing of God's dealings with mankind, first under the covenant of the Law, and next under the Gospel. This is certainly a most remarkable and important testimony: it must be quite obvious, that if there is any truth or authority belonging to this assertion of St. Paul, that Abraham's conduct in this matter was a positive type of God's own doings, then there could not possibly be anything sinful therein; then it is quite impossible for us, consistently with any regard for the authority of Scripture, to condemn polygamy, such as that of Abraham, as *a matter of principle*, as being absolutely and altogether opposed to the law of God.

II. The next eminent example of this practice, after that of Abraham, is found in the history of Jacob. Jacob also lived under the special guidance of Almighty God; and he too practised polygamy,—to a greater extent even than Abraham: in addition to his two wives, Leah and Rachel, he had their two handmaids, Bilhah and Zilpah, as concubines. Yet he also received God's blessing, on many very remarkable occasions, as on that night especially when he wrestled with an Angel at Peniel; when, as we are told with so much preciseness, "he rose up and took his two wives, and his two women servants, and his eleven sons, and passed over the ford Jabbok. . . . . And He blessed him there." (Genesis xxxii. 22.) In this case also there is no syllable of disapproval contained in the sacred record; although several other offences of a kindred nature are clearly and severely condemned at the same period.

Yet we find some eminent divines presuming to charge Jacob with sin in this matter. The late Bishop of Lincoln, (Dr. Wordsworth,) in his note upon Genesis xxix. 28, makes this observation* :—

> "Here is a proof of the veracity of the history; Jacob's sins are not disguised."

And again he says,—

> "See also the inflexibility of the Levitical Law; it stigmatizes the marriages of Jacob, from which all the tribes of Israel derived their origin."

This is a very serious imputation to make upon one who stands so high in sacred history as the patriarch Jacob; and when it is made by a writer of such eminence as Bishop Wordsworth, one who was so strong an upholder of the divine authority of the Bible, it is certainly very extraordinary. The Bishop's assertion implies not only that Jacob committed an offence against the divine law in marrying the two sisters, but that he did it knowingly, that he sinned wilfully herein. If this were true, we should certainly expect to find some notice taken of it in this sense in the sacred narrative; some declaration of God's displeasure, some rebuke or correction administered to Jacob himself, and some record of his repentance and forsaking of the sin. This is the uniform and invariable practice in all other similar instances in Sacred History, of which there are numerous, familiar, and signal examples; examples, which indeed form some of the most valuable and practical portions of the Bible. In the total absence of any such statements, as Jacob clearly never put away either his wives or his concubines,—for Rachel indeed died in childbirth,—the Bishop's theory leaves us to suppose that he persisted in his sins through all those years of his life; that

* "The Holy Bible, with Notes, &c." By Christopher Wordsworth, D.D., Bishop of Lincoln.

notwithstanding this, he continued to receive abundant revelations, promises, and blessings, from Almighty God; and that through the very means of his sins, that is, by the birth of his twelve sons, the long standing and often repeated promises of God were fulfilled, the possession of Canaan secured to the seed of Abraham: and not only of the earthly Canaan, but the heavenly Canaan also; for it is of the twelve tribes of Israel, whether taken in a natural or a spiritual sense,—it is of them that the great company of God's elect servants is composed,—"the hundred and forty and four thousand of them that were sealed." (Rev. vii. 4-8.)

Such a theory as this, if it were allowed to pass unchallenged, would really be subversive of the moral character and teaching of the Bible; the true purport of which must certainly be to show us that sins wilfully persisted in will *not* inherit God's blessing. We therefore appeal most urgently and most directly to the Bishops of our Church, and ask whether they are really prepared to affirm such a judgment as we have here quoted, whether they will allow it to stand without some public and effectual protest.

III. Taking the Bible in its chronological order, we may now pass on to consider the Laws given by the hand of Moses in relation to this important question.

There are numerous provisions contained in this great body of laws which touch upon Marriage, and the various matters belonging to it: but there are only two passages which directly relate to the practice of polygamy. The first of these is in the seventeenth chapter of Deuteronomy,—a passage which refers to the future time when the Israelites should be settled in their promised land, with a king set over them. It is ordered that their king should not multiply horses to himself, nor encourage the people to go down to

Egypt with that object. "Neither shall he multiply wives to himself, that his heart turn not away; neither shall he greatly multiply to himself silver and gold." (Deut. xvii. 17.)

Again, in the 21st chapter of the same Book, there is a regulation applicable to polygamy.

> "If a man have two wives, one beloved, and another hated, and they have borne him children, both the beloved and the hated: Then it shall be, when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved first-born before the son of the hated, which is indeed the first-born: But he shall acknowledge the son of the hated for the first-born, by giving him a double portion of all that he hath: for he is the beginning of his strength; the right of the first-born is his." (Deut. xxi. 15-17.)

These two passages include all that the Mosaic Law says on the subject of Polygamy: and we must say that the comparative silence with which the matter is treated is very remarkable; considering that the system was well known and commonly practised in the world at that period; that it touches such a fundamental point in the very principle of Marriage itself, and that this question must therefore always be one of vital importance in the moral law of mankind.

The former of these passages is limited in direct terms to the conduct of the future kings of Israel; it does not forbid polygamy to them *in toto*, or as a matter of principle; but only that they should not run into excess; "he shall not multiply wives to himself"; just as it is said in the preceding verse, "he shall not multiply horses to himself": and a definite and very practical reason is given, "lest his heart should turn away from the Lord." The temptation which must beset a despotic Prince to indulge in these excesses, which, as we know from other histories, was so common a practice among Eastern Sovereigns; and the results which must inevitably follow, of drowning him, body and soul, in

sensuality, and utterly turning away his heart from the service of God, and all the needful work of this life,—all this is so plain that we can well understand the force and the value of the injunction contained in these words. And in a certain degree we may say also that the spirit of this precept might very properly be urged upon other men, who though not absolutely Princes, are yet wealthy or independent enough to have the means of indulging such appetites to excess, if they are so disposed. But so far as the terms of this law itself extend, they certainly do not prohibit polygamy absolutely, in every degree, either for kings or their subjects.

The other passage in Deuteronomy applies to a particular case which may often happen when there is polygamy: for certain reasons, which we need not discuss here, God chose to insist upon the rights of primogeniture in behalf of that son who was the first-born in point of fact, in preference to another who might be a greater favourite. That the system of polygamy is here recognised and allowed, without any shadow of censure upon it as a matter of principle, is too plain to need further argument.

What might be the *reasons* why God did not forbid this practice, or even put any restriction or discouragement upon it, beyond that very limited precept concerning the kings,—this is a question upon which men may hold different opinions. But as to the *facts* of the case,—that the system is clearly embodied in that Code of Laws which professes to have been delivered to Moses by the Lord Jehovah,—about this there can be no question.

IV. But although polygamy in its proper sense is clearly allowed, there is another sense which is sometimes confounded with it, and which is as clearly condemned, namely, when the word is applied to the sexes conversely. That is to say, one man is allowed to have two or more wives; but

one woman is never allowed to have two or more husbands at the same time. This would be adultery on her part, and on the part of all the other husbands after the first. This principle is clearly shown in the words of the law which we have already quoted, (Leviticus xx. 10,) and in various historical facts related in the Bible, such as those two incidents in which Sarah was concerned, and especially in the case of David and Bathsheba. The clearness and severity with which this offence of polygamy on the woman's side is condemned, brings out into greater prominence the fact that there is no such prohibition in regard to the man.

There are obvious physical reasons which would account for this distinction; and for which the laws relating to the sexes cannot generally be applied conversely, or by analogy, as many people assume now-a-days. This error is especially seen in the arguments which are commonly used against Marriage with a deceased wife's sister. Because there is a certain Levitical law which under certain circumstances forbids a man to take his brother's wife, therefore it is assumed, by analogy or parity, that the same law forbids a woman to marry her sister's husband. Whatever may be the worth of other arguments employed on this question, it is at least clear that *this one* is fallacious. Scripture knows no such parity or equality between the sexes.

V. Returning now to the historical Books of the Old Testament, among other numerous instances of polygamy there recorded, there is one which on some accounts deserves particular notice; this is the case of Elkanah, the father of Samuel, who had two wives, named Hannah and Peninnah. (1 Sam. i.)

It deserves notice first on account of the high character of Elkanah himself. He appears to have been a Levite, most devout and sincere in his religion, most faithful in performing his duties towards God; and also most affectionate

and exemplary in his conduct as a husband. His wife, Hannah, also exhibited in her affliction, all that humble but earnest reliance upon God's mercy which is so constantly commanded and commended in God's Word, and which is indeed one of the best evidences of true religion. Whatever may be said of the imperfections of other great characters in sacred history, such as even those of Jacob or David, there is at least no such imputation to be laid against this family, there is nothing to detract from the full weight of the authority to be derived from this example. If God tolerated or sanctioned the polygamy of Elkanah, it was not as a concession to his hardness of heart, or for any such reason: and not even Bishop Wordsworth has ventured to charge either Elkanah or Hannah with sin in this matter.

Yet, if there was no sin on the part of Elkanah in taking two wives at the same time, why should the same thing be counted sinful in any other man? What is the law, what is the principle, which is to determine the question?

In this case, if there is any truth in the words of this history, there can be no doubt about the fact of God's sanction being given to the polygamy. In *ver.* 19 we are told how "God remembered Hannah"; and when she had borne her son, "she called his name *Samuel*, (*i.e.*, asked of God,) saying, Because I have asked him of the Lord." So also again, "The Lord visited Hannah, so that she conceived and bare three sons and two daughters." (ch. ii. 21.)

And furthermore: when we consider the character of Samuel himself, and the important offices which he fulfilled in the Church of God: his early piety; his prophetical function, from his cradle to his grave, all the more notable because "the Word of the Lord was precious in those days; there was no open vision"; the great work which he accomplished in establishing the monarchy in Israel; and also in compiling a considerable portion of the Sacred History:

does not all this warrant us in saying that Samuel was sent into the world by God's own will and providence, was ordained to serve his eternal purposes,—as much perhaps as any man that was ever born?

VI. There is one other example in the Old Testament so eminent, and presenting such a conclusive argument on the question before us, that it cannot be altogether omitted from this discussion. This is the case of King David. Perhaps the most striking fact in David's history, in connexion with this subject, is the contrast presented between God's dealings with him at two very critical periods of his life. On the occasion of his great sin of adultery with Bathsheba, we are told very distinctly that "the thing which David had done displeased the Lord." And God inflicted a very severe punishment upon him on that account; a punishment which he felt keenly, and which thoroughly humbled him for all the remainder of his days. Nothing could mark more strongly the fact,—not only that God condemned the sins of which he had been guilty; this we might be quite sure of, even without such a clear declaration of it;—but the fact that God would not let David go without an adequate rebuke and punishment for his offence. Now let us compare with this narrative the account of another portion of David's life. During the seven years that David was reigning in Hebron, we are told that he had six sons born to him, each one being by a different mother. (2 Sam. iii. 2-5.) At the end of that period, he went up to Jerusalem, and was established as King over all Israel and Judah. "And David went on and grew great, and the Lord God of Hosts was with him. . . . . And David took him more concubines and wives out of Jerusalem, after he was come from Hebron: and there were yet sons and daughters born to David." (2 Sam. v. 10-13.)

Can anyone refuse to see the very marked contrast

between this record, and that history of Bathsheba? Not only is there no shadow of rebuke here in regard to his plurality of wives,—wives and concubines too: but in the very midst of all this polygamy we are told, "The Lord God of Hosts was with him"; —words which must certainly carry a very grave and substantial meaning, if these positive expressions of the Bible are not to be put down as empty phrases.

Nevertheless, in the face of this very strong assertion of Holy Writ, we find the same learned Bishop of Lincoln, whom we have before quoted, making this comment upon the passage:—

> "Ver. 13. 'David took more wives': a sin in David, as forbidden by God's law, Deut. xvii. 17. But the stain and blemish of the type vanish in the divine Antitype, Jesus Christ."

Now such a censure as this could only be justified on one or other of these two grounds: either that the words in Deuteronomy, "he shall not multiply wives," were intended to mean, he shall not take more than one wife,—which is clearly an extravagant interpretation to put upon them; or else by showing that David's additional wives at Jerusalem *did* turn away his heart from the Lord, and therefore *did* amount to an actual transgression of that commandment. The Bishop has altogether omitted to show any such result, —a very sufficient proof that there is not a syllable to be found in the inspired narrative to warrant any such inference. There is indeed very positive proof to the contrary: for in the history of Solomon we are told, "It came to pass when Solomon was old that his wives turned away his heart after other gods: and his heart was not perfect with the Lord his God, as was the heart of David his father." (1 Kings xi. 4.)

We cannot forbear saying again that it is a very serious thing for a Bishop of Christ's Church to bring these charges of sin, charges which imply wilful, persistent, sin, against

such men as King David and the Patriarch Jacob: charges, which are not only entirely unsupported, but are directly contradicted by the evidence and the declarations of Scripture itself: and we think it is due to the cause of truth, due to the character of these eminent Saints, due to the credit of the Bible itself which gives them so exalted a position, that such expressions should either be thoroughly justified, or else candidly withdrawn.*

VII. It is needless to accumulate further evidences from the Old Testament on the subject of Polygamy. The practice was clearly allowed to the Jewish people all through the period embraced in that inspired history: there is no record of any general prohibition or rebuke of it being pronounced by any sort of authority; nor of its actual cessation at any time as a matter of fact. If therefore there is any truth in the fundamental theory of the Bible, namely, that this nation was then under the special and providential government of Almighty God, that his Will was distinctly and directly made known to them through the intervention of chosen men, and that any serious violation of his revealed Laws, if not always immediately punished, was yet denounced and ultimately visited with judgments in some form or other: then at least it must be inferred that this practice,—so freely allowed, and so generally adopted, even by those men whose names stand highest in the sacred annals,—could not be any great offence against the will of their Divine Ruler; could not be anything in the nature of absolute sin and unholiness; could not be fundamentally wrong as a matter of principle.

Whether or not there is any distinct prohibition of the practice contained in the Writings of the New Testament,—this is another question which we shall deal with immedi-

* These words were written in 1884, several months before the death of this learned Bishop; for whose high personal character generally the Author desires to express his great respect.

ately: if there be any such prohibition, then no doubt this must be acknowledged as a supreme law for Christians; and, so far as it goes, must supersede the permissions of the Old Testament. But let us understand clearly what will be the effect of this. It will virtually have the effect of cancelling, setting aside, all those histories and those laws of the Older Dispensation which so plainly express or imply a sanction for the practice. And what will this amount to? How much of the Old Testament will require to be absolutely blotted out, utterly effaced, in order to bring the book into conformity with the New? How many pages must literally be torn out of our Bibles, from this earlier portion of them, at least, in order to make this a safe book for the reading of ordinary men? At present, as the Book stands now, in all its naked originality, with all these histories of Abraham, Jacob, Elkânah, David, and others, included in it, it is indeed a most dangerous, a most misleading book,—if this modern theory of marriage should be correct. Most certainly, such a theory, involving such serious difficulties as this would do, must be subjected to the most careful scrutiny before it is accepted: and cannot be accepted at all, unless established upon the clearest and most indisputable evidence.

CHAPTER V.

I. MANY persons probably will be much surprised to hear that there is no passage in the New Testament which forbids the practice of polygamy to Christians generally. There is in truth no place which deals with the question in direct terms, as a matter of principle: there are only just a few passages which appear indirectly or incidentally to touch upon the subject; passages, which some theologians both in ancient and modern times have assumed to be opposed to the practice; and on the strength of which, in conjunction with other motives, various decrees and Canons have been made, forbidding it to baptized members of the Christian Church.

When we consider, then, the universal importance of the question itself, the clear sanction given to this practice under the Mosaic Dispensation, and the fact that our Lord did correct many abuses of God's Law, which had crept in by tradition, and over-ruled even some direct precepts of that Law, all these circumstances cannot fail to give great significance to his silence on the question of polygamy, and the total absence of any general condemnation of it, either on the part of Christ himself, or his Apostles.

Among the few passages in the New Testament which are sometimes thought to prohibit polygamy, the first, and perhaps the most important of all, is that in the nineteenth chapter of St. Matthew. The matter which gave rise to this discussion between Christ and the Pharisees was a question, not about Polygamy, but about Divorce: and therefore as we propose to deal with that subject presently, we need not dwell in this place on those expressions which are more immediately directed to that point. But among

other things, our Lord said, according to St. Matthew's text,—

> "Have ye not read that He which made them at the beginning, made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife; and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder." (Matt. xix. 4-6.)

From these words, although there is certainly nothing like a positive declaration on the subject, and especially no direct abrogation of the laws and customs previously subsisting, yet some inferences have been drawn, adverse to the principle of polygamy.

(1.) "He made them male and female:" does not this mean one man and one woman? and does it not therefore show that this is the original and the proper form of marriage, one man with one woman? We answer, No: the essence of the phrase, "Male and female," ἄρσεν καὶ θῆλυ, is not that there was only one of each, but that God made the human race to consist of two sexes; as is also the case with nearly all, (though not quite all,) of the other species of living creatures with which we are acquainted. These words therefore do not apply exclusively to mankind, any more than to the brute creation generally; nor do they constitute a law of monogamy among men any more than among the brutes.

(2.) But it is said further, "A man shall cleave to his wife; and they twain shall be one flesh." There is, no doubt, as St. Paul himself declares, a certain mystery contained in these words; and it is perhaps not easy to define their meaning very precisely. We must remember however that St. Paul applies the same words to the case of a man who is joined to a harlot; and therefore it appears that the expression, whatever be its precise meaning, is fulfilled just as much whether a man has one wife or several.

(3.) Again we are told, (ver. 9,) "Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery." Does not this positively forbid polygamy?—Clearly not. What indeed can be plainer than the words themselves? "Whosoever shall *put away* his wife, ... and marry another": if therefore a man *does not* put away his wife, but marries another in addition, then this dictum of Christ does not apply to him at all: then, so far as these particular words go, he is certainly not convicted of adultery. And if it were otherwise; if these words of Christ did really mean that any man who took a second wife in addition to the first was thereby guilty of adultery, then they would clearly convict the whole patriarchal and Jewish economy of fostering this great crime: a result which must be absolutely fatal to the whole character of the Bible, from beginning to end.

There is then in all this passage nothing which can be taken as a clear and direct prohibition of polygamy. Even if that system had only been derived from Gentile customs, or from unknown sources, there is nothing here to declare it unlawful: much less is there anything sufficient to overthrow the strong presumption in its favour derived from the history of the Patriarchs, the Laws, and the unbroken practice of the Jewish nation. And so far as the Gospel histories inform us, nothing else at all bearing upon the point was uttered by our Lord on any other occasion. How this silence on his part is to be accounted for, we must leave to be explained by those persons who declare the practice to be inconsistent with the principles of Christianity, or the laws of morality: but at any rate, it will hardly be said that Christ forbore to condemn it, either from the fear of exciting opposition, or as a concession to the prejudices or the hardness of heart of the world in those days.

II. There were however some truths which for certain

reasons our Lord did not clearly make known to his Apostles during his lifetime, but which he left to be more fully revealed by the Holy Ghost, after his own visible presence was withdrawn from them. Among other things, this was especially the case in regard to the rite of circumcision; the necessity for which was not declared to be abolished till nearly twenty years after his Ascension. The same thing *might* also be true with regard to the sanction of polygamy: it might have been left to his Apostles at a later period, but still within the age of Apostolic authority, to declare this practice either absolutely unlawful to men generally, or at least unsuitable for Christians. The next question for us therefore is this:—Have they left us any such declaration on record in the Writings of the New Testament? Here again, we must clearly answer, No: and not only this, but here also, as in so many other parts of Scripture, this silence is emphasised by the references which *are* made to other matters connected with Marriage.

The first place to which this remark very forcibly applies is that occasion mentioned in the fifteenth chapter of the Acts, when the Apostles and Elders of the Church assembled together at Jerusalem, chiefly for the purpose of determining the question of Circumcision. This question, involving the abrogation of a divine ordinance that had been given to Abraham himself, was naturally considered to be a matter of great importance, one that could not be settled by the authority of any single member of the Apostolic order, but required the unanimous concurrence of the whole body,—"the Apostles and Elders and the whole Church." (ver. 22.) And the same united authority would no doubt have been competent to make a similar change with regard to the law of polygamy, if they had felt themselves moved to do so; though possibly if any Apostle by himself had expressed novel opinions on the subject, they might not have been so readily received by the Church

at large. However, the actual terms of the Decree or Letter issued by this early Council are very significant on the question before us.

> "It has seemed good, (they said,) to the Holy Ghost and to us to lay upon you no greater burden than these necessary things:—That ye abstain from meats offered to idols, and from blood, and from things strangled, and from fornication, from which if ye keep yourselves, ye shall do well. (Acts xv. 28, 29.)

The fact that they mentioned fornication as one of the few things especially to be avoided by Christians, and that they did not say a word against polygamy, is surely a very strong proof that they did not look upon this practice as any serious offence against religion or morality, and that they had no idea of abolishing it,—or rather we should say, that they had no command or commission from the Holy Ghost to abolish it, within the confines of the Christian Church.

III. There is one expression of St. Paul's which has often been thought to be in direct opposition to polygamy. In answer to some questions which the Corinthians had submitted to him on the subject of marriage, he writes—

> "Nevertheless, to avoid fornication, let every man have his own wife, and let every woman have her own husband." (1 Cor. vii. 2.)

The inference, however, which has been drawn from these words, however natural it may seem at first sight, is not truly in accordance with the Apostle's meaning. The primary object of his advice is not that every man and woman should have one wife or one husband, and one only; but that every one, both man and woman, should live in the married state, not in the state of celibacy. This is clear enough, not only from the words that he uses, but from the reason which he gives,—"in order to avoid fornication;"—well knowing that with a large part of mankind, the alternative is between conjugal intercourse in a lawful form, or an unlawful form. It

is not desirable to build weighty arguments too much upon slender niceties of verbal criticism; yet it may be worth remarking here that St. Paul does not use precisely the same words in reference to the two sexes, as our Translators have done in English, "his own wife," "her own husband." In the former phrase, he uses the genitive or possessive case, *τὴν ἑαυτοῦ γυναῖκα*, indicating a certain condition of property or dominion in the husband, which he would never think of attributing to the wife: in the latter case, it is simply *τὸν ἴδιον ἄνδρα*, her own husband, the one to whom she belongs, though not perhaps her own exclusively. This, though it may not exactly agree with some modern ideas on the subject, is at least strictly in accordance with the doctrines which St. Paul elsewhere so emphatically insists upon.

The whole of this chapter is so fully devoted to the subject of marriage, that we can hardly understand how St. Paul could have omitted to speak in direct terms upon the question of polygamy, if he had himself entertained any strong opinions against the practice,—either his own private opinions, or derived by inspiration "from the Lord."

IV. But the passage which really does most directly touch this question of polygamy, is the rule which this Apostle lays down concerning the Bishops and Deacons of the Church.

> "A Bishop, (he says,) must be blameless, the husband of one wife, vigilant, sober, etc." 1 Tim. iii. 2-7. Cf. Titus, i. 6.

Again,

> "Let the Deacons be the husbands of one wife, ruling their children, and their own houses well."

There are two interpretations which have been assigned to this phrase, "the husband of one wife." (1.) A man who has not more than one wife at a time; *i.e.*, who is not a polygamist: (2.) A man who has not married a second time,

after the death of his first wife. If the former of these is the true meaning in this place, then this sentence shows very clearly that polygamy was not abolished in the Church generally at that time; for if there were no polygamists among the Christian brotherhood, it would be superfluous to name this as one of the conditions required in a Bishop; just as much so as it would be in the English Church in the present day. At the same time, supposing this to be the true meaning, the phrase cannot be taken as a prohibition of polygamy universally: it is a limitation applied strictly to the Bishops or Elders, and the Deacons, and for the very proper reason that temperance and moderation in all things, in wine, in marriage, in riches, and in personal temper and conduct generally, are required especially in those who are to be examples to their brethren,—"the salt of the earth, the light of the world."

If the other meaning of the phrase is to be accepted, then it imposes an additional restriction upon the Ministers of the Church in regard to their marriage; but leaves untouched the question of polygamy among the laity generally. These two interpretations of St. Paul's rule have been discussed at very considerable length by learned doctors in the Church, both ancient and modern. The Early Church was much divided on the point, and we find some Canons prohibiting *digamia*, or second marriage, among the clergy, as in the so-called *Apostolical Canons*, No. 16; and some even among the laity, as in the *Apostolical Constitutions*, and the Canons of *Neocæsarea*, A.D. 314: while others, as those of *Nicæa*, A.D. 325, and *Laodicea*, A.D. 367, uphold the liberty of Second Marriage generally.*

We do not think it necessary here to enter upon this controversy further than to say that the former of these two

* These Canons are quoted at length in a work called "Hagar, or Scripture Facts concerning Marriage." (Appendix.)

interpretations appears to be supported by the preponderance of argument and reason, as well as of authority: there is no apparent necessity, moral or practical, for imposing that arbitrary restriction of second marriage: and, at any rate, the Church of England has not adopted this as the meaning of St. Paul's precept; she has not established any such law in regard to her own Bishops. While on the other hand, as we have just said, even allowing polygamy to exist among the laity, there is very reasonable ground for restraining it among the clergy. And therefore, understanding the Apostle's rule in this sense, we take it to be a clear indication of the existence of this practice in the Church at large, at the time when St. Paul wrote his letters to Timothy and to Titus; and that it did not seem to require his censure as *a matter of principle*, as being opposed altogether to the principles of Christianity; otherwise, of course, than when it transgressed the limits of temperance.

V. This then is the truth about Polygamy. As a matter of principle, it is not condemned or prohibited in the pages of the Bible,—neither in the Old Testament nor in the New. Under the Patriarchal and Jewish Dispensations, it was openly and continuously practised; and under such conditions as to imply the full sanction of Almighty God: under the Gospel Dispensation, there is nothing whatever in the shape of a direct prohibition of the practice; there are no more than a few indirect or incidental references to it; and these, so far as they go, indicate that the practice was still prevailing in the Church, in the days of the Apostles. These facts, we say, are plain and unquestionable; and the inference from them is inevitable,—so far at least as the Bible is any guide to us in these matters,—that polygamy is not essentially opposed to the law of God, nor to the fundamental principles of marriage; it is not opposed to the laws of morality; it is not opposed to the law of Christ. So

much as this it appears an absolute duty to acknowledge, out of a due regard for Truth.

But while candidly admitting these facts, we are quite at liberty to say that the state of monogamy appears to be very much preferable to polygamy as a general rule; more conducive to domestic peace and happiness; more consistent with the principles of temperance, manliness, and other personal virtues which men ought to aim at; and especially, more consonant with that deep feeling of love and union which belongs to the Christian ideal of Marriage. And again, looking practically at the present state of Society, not only in England, but among European nations generally, there can be no doubt that any sudden or general change of system in this matter would produce very serious confusion and difficulty. All these considerations, on the side of expediency, may fairly be urged, and ought to be duly weighed, in any serious practical discussion of this subject.

And yet, even taking all this into account, there is room for the opinion which has been expressed by many thoughtful and earnest men, that in some particular cases, a limited form of polygamy might be desirable and permissible; that under certain circumstances a man might be properly allowed to take a second wife, even while the first was still living, and not formally divorced from him. We shall have occasion however to touch upon this point again in connexion with the law of Divorce: for the present we can only say that this question of expediency opens up a very wide field of discussion, and requires to be looked at from many points of view. We shall not attempt to deal fully with it on this occasion; our object here being chiefly to clear the ground and lay a good foundation for further discussion, by examining the principles upon which it must be based, especially those which rest upon the authority of Scripture; and which it seems clear are not generally understood in the present day.

VI. There are two points however to which we cannot forbear to call special attention, before we close this chapter.

(1.) First, in looking at this question of Polygamy, we must not confine our view to the condition of English Society, nor even to the social conditions and sentiments of Christian Nations generally: the subject is really one of universal, world-wide, importance; it must be looked at in reference to the whole human race. And in the present day, when our own intercourse with the whole world is so rapidly increasing, with the many millions of those who yet stand outside the pale of the Christian Church, but whom we are so anxious to bring within its influence; having regard to this great fact, we say that it is most especially necessary that we should take a broad view of this question, that we should be able to rise above the narrow prejudices by which we are here surrounded, that we should deal with it on none other than the sure and solid ground of Truth. If indeed the system of Polygamy is absolutely, positively, and unquestionably forbidden by the Law of Christ, then certainly our sacred duty to our Divine Master requires us to proclaim this fact, with all forbearance and all charity, but yet with all firmness and faithfulness, to the Church and to the world; and not to admit any persons to the special privileges of the Church, unless they conform to this law. But, on the other hand, if, as we confidently affirm, this absolute and unquestionable law does not really exist; if it cannot be established on the authority of our received Scriptures,—the only ultimate authority to which we can appeal,—then certainly we have no right to force our own traditions and prejudices upon other nations, other races of men, whose habits and character, whose moral and physical condition and requirements, are so very different from our own. We may say all that we think just and necessary in the way of *persuasion*, to show them what we deem the greater advan-

tages of monogamy: but, at any rate, we have no right to insist upon this law, as a matter of *religious obligation*, where we cannot show the very clearest authority for doing so.

(2.) And again: before we presume to urge upon these other nations the necessity or even the advantages of monogamy, there is this further very serious question to be answered:—Do we really practise anything like strict monogamy among ourselves? How much polygamy really prevails among all classes of society,—and polygamy in its very worst form, in the form of loose, illicit, clandestine intercourse? This indeed is a difficult question to answer; it cannot be answered with any degree of exactness by anybody, for the simple reason that so much of it is done in secret. But is there any doubt about the fact that it does prevail, to a very large extent, among all ranks, from the highest to the lowest? And further, that among the upper classes at least, it is practically ignored, winked at, even by those who are supposed to guide and to guard the religious principles of the nation? These are most serious questions, involving responsibilities of the gravest character, such as are evidently but little understood or regarded by those who are chiefly concerned with them. But they are questions which have a very practical bearing upon this matter of preaching monogamy to the rest of the world. It is a fact which is generally admitted that in countries where polygamy is allowed, prostitution is almost unknown or is very rare: and there can be no doubt which of these two things is the most offensive in the sight of God, which is the most mischievous in its practical effects, both moral and physical.

Assuredly, we have a good deal to do in the way of setting our own house in order, in casting the beam out of our own eyes, before we can assume to correct all the rest of the world in this matter, to pull out the mote from our brother's eye.

CHAPTER VI.

We come now to the important and critical question of Divorce and Separation: and this also is evidently one that is to be determined as a *matter of principle.* Some authorities in the Church, as we have before observed, have held the doctrine that the bond of marriage is of such a special and sacred character, that the union, once lawfully constituted, can never be dissolved by anything short of death. Others again, including some names of high authority, could not see why this contract should differ from every other contract among men, why it should not be terminated by the free mutual consent of both parties, so long as no other persons were directly injured thereby. And again there are laws to be found in Scripture which appear to give power to the husband alone, under certain circumstances, of absolutely dismissing his partner. These then are the points we are now to determine:—whether the marriage bond is absolutely indissoluble during the joint lifetime of the two persons; or whether there is any exception to this absolute law: and if so, what are the exceptions, what are the reasons for which the bond may be totally dissolved. And here again, as before, we are to look carefully at the facts which are presented to us in Scripture, and to discriminate, as far as possible, between those which may perhaps be merely of a local character, and those which appear to be part of God's fundamental laws on the subject.

I. The first question is whether Marriage is altogether incapable of being dissolved by anything short of death; whether this is a law imposed on it by God himself, as an essential condition without which it would not be lawful in

his sight; and whether this law is so absolute and universal as to admit of no exception whatever.

The opinions or doctrines which have been held on this point are all based upon some expressions which are found in *Genesis* ii., in the account of the first institution of marriage, between Adam and Eve.

> "The Lord God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh instead thereof; and the rib, which the Lord God had taken from man made he a woman, and brought her unto the man. And Adam said, This is now bone of my bones, and flesh of my flesh: She shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife; and they shall be one flesh." (*Gen.* ii. 21-24.)

The latter words of this passage, as we have seen, were quoted by our Lord in his discussion with the Pharisees: and from the combined authority thus given to them, the doctrine has been derived that man and wife become united into one body, in a mystical sacrament, such that they can never be lawfully separated for any cause whatever. Thus we find this declaration of doctrine put forth by the *Council of Trent*, (Session xxiv., A.D. 1563.):—

> "The first parent of the human race, by divine inspiration, declared the bond of matrimony to be perpetual and indissoluble, when he said, This is now bone of my bones, and flesh of my flesh: therefore shall a man leave his father and his mother, and shall cleave to his wife; and the two shall be in one flesh."

Now, if the Sacred record had simply declared that a man should leave his father and his mother, and cleave to his wife, this would be intelligible enough, and would not appear to involve any special mystery. The mystery, such as it is, is contained in the words which follow, "they two shall be, or shall become, one flesh": and it is by virtue of the principle embodied in these words that the union

is supposed to acquire its special characteristic of being indissoluble. What may be the precise meaning of these words is a point, as we said before, that is not very easy to determine from the words themselves. The phrase is clearly not to be interpreted strictly, to the letter: it is not true that man and wife become one flesh, one indivisible human body, in the most literal sense of the words: and yet, it is not a spiritual union that is here spoken of; nor a mere civil unity and community of property, and social rights. As therefore different commentators understand the words in different senses, and as there is apparently no living authority to determine the question, we may pass on to see what elucidation of the matter can be found in the subsequent pages of the inspired history.

And here we are soon met by the fact that some violations of this supposed law of indissolubility are recorded by the same pen which wrote this original narrative. And not only is the separation of man and wife related to have happened as a matter of fact, but it is distinctly stated to have taken place with the permission, and even, in some cases, by the command of Almighty God.

II. The earliest example of this separation presented to us in Scripture is again that of Abraham and Hagar. And here we must observe in the first place that although Hagar is called sometimes the concubine of Abraham, yet she was a wife in all essential particulars. The concubines of Scripture were in fact true and lawful wives, though generally holding a lower rank in the household, and not unfrequently being bondwomen, as was Hagar.* But inasmuch as Abraham had a son born of her, this fact made her essentially his wife: and as we have seen that the union

* "After the phrase of the Scripture, a concubine is an honest name: for every concubine is a lawful wife, though every wife is not a concubine."—*Homilies of the Church of England: Second Book, No.* 10.

was allowed and blessed by God himself, this shows that it was a lawful form of marriage in his sight, and was no mere act of fornication or adultery. If therefore the conjugal union were truly such an indissoluble bond as is asserted by the Roman Church, and by many eminent authorities in our own Church as well, then we must expect to find that original law maintained especially in the case of such a person as the patriarch Abraham,—"he shall cleave to his wife, and the two shall be one flesh";—words which, if they are to be interpreted in any strict sense at all, must forbid not only the total divorce or dissolution of marriage, but even the partial separation, the divorce *a mensâ et thoro*, which is sometimes allowed by the canons of the Church.

This expectation, however, is not borne out by the history. For some cause of offence which is not quite clearly defined, and which we need not discuss at this point, we are told that Sarah said unto Abraham,—

> "Cast out this bondwoman and her son; for the son of this bondwoman shall not be heir with my son, even with Isaac. And the thing was very grievous in Abraham's sight, because of his son. And God said unto Abraham, Let it not be grievous in thy sight because of the lad, and because of thy bondwoman: in all that Sarah hath said unto thee, hearken unto her voice: for in Isaac shall thy seed be called . . . . . And Abraham rose up early in the morning, and took bread, and a bottle of water, and gave it unto Hagar, putting it on her shoulder, and the child, and sent her away." (*Genesis* xxi. 10-14.)

Here then is a plain instance of separation, and virtually, so far as the history informs us, an absolute dissolution and termination of the union which had been established between Abraham and Hagar. And this took place under the express directions of Almighty God,—even against Abraham's own personal inclinations, and his sense of justice and duty to his bondwoman. What conclusion then

can we draw from this example, if we are to accept this history as substantially true and trustworthy; if we are to believe that God himself did really give his instructions and commands to Abraham on this occasion? Are we to say that God was here setting aside his own laws for a particular purpose, as of course he can do, and may do, when he chooses? This kind of argument is very commonly found in the mouth of controversialists, when they meet with any facts in Scripture which do not agree with their own dogmatic theories: and they support the principle of it by analogies from the physical world, where various general laws are often seen to be overruled by the interference of some higher law, some more powerful agency. We do not dispute the existence of this principle altogether, either in the natural or in the moral and spiritual world; but in applying it to any particular case, some cautions and limitations are obviously necessary. It is not for us to say that God is suspending his own laws in any case, unless we have some good authority for this presumption: we are not to say so merely to escape from some logical difficulty which may be really one of our own making, which may arise simply because we have *assumed* something to be a law, which does not really bear that character. And we are not to suppose that the laws of the Creator are suspended for any light reason, especially laws of a fundamental character: if we are justified at all in assuming such a fact, that one law is being suspended in favour of another, we must at least suppose that it is a law of a subordinate rank, a local or temporary law, perhaps; but not one of those principles which are essential parts of God's holiness, righteousness, and other high attributes.

Looking then at the example before us, and admitting, as it is only reasonable to do, that there is a certain general law which binds man and wife together, yet we say it clearly cannot have that strict and inviolable character which

some persons would claim for it; it cannot be absolutely essential to marriage,* otherwise the Almighty would not be himself the first to break it, as the Bible here represents him to be. In short, it is a general law; but like most other general laws, subject to exceptions. What those exceptions may be, is a point we shall enter upon immediately; but for the present we say that the existence of *some* exceptions to the law is manifestly shown, not only by the facts of the Old Testament, but by the New Testament also; where, as we have before seen, our Lord himself makes one special exception to it,—"for the cause of fornication."

III. It being clear then that *some* exceptions to this law of indissolubility are warranted by the authority of Scripture, both under the Jewish and the Christian Dispensations, our next business is to determine the grounds upon which these exceptions are allowed. And here it is that we must be prepared to encounter considerable difficulties, and of various kinds. The subject itself has intrinsic, practical difficulties of its own. We have to steer between the error of admitting too much laxity, which would be productive of obvious mischief and immorality; and the opposite error of too much rigidity, which makes the bond of marriage a state of torment and slavery, and refuses to give relief where justice and reason require it, and where true religion does not forbid it. And there are difficulties of interpretation also, difficulties in assigning the true value to each of the various facts contained in various parts of the Sacred

* Thus Dr. Jackson, the late Bishop of London, writes, (1876,) "Call them what you will, there are only two possible classes into which the connexion between the sexes can be distributed,—connexion for life, and connexion during pleasure. The one is marriage; the other is fornication. . . . .

"The truth is, the *essence* of marriage does not consist in the religious sanction, or the legal ceremony, but in its being *lifelong*."

Volume, and in reconciling them all with one another. Our endeavour therefore will be, in the first place, to state the facts of Scripture, as we find them, to look at them all, boldly and honestly, and to draw no other inferences than may seem to be fairly justified by the premisses before us. By this course we shall at least hope to arrive *at the truth:* and whatever that may be, whether it be in accordance with tradition or against it, whether it agree with popular prejudices or not, whether it may appear to further the interests of morality, or to damage them, yet at least it will place us on firm ground; we shall stand on a safer and higher level than all those preachers and moralists who are obliged to shut their eyes to plain facts, and to build their religion and their morality upon a positive suppression of the truth, a wilful disregard of this divine principle.

IV. Returning then for a few moments to the history of Abraham, we ask, What were the grounds on which God commanded him to dismiss his secondary wife, Hagar, fourteen years or more after she had borne him a son? There is a certain reason assigned for this course in the Mosaic history, a reason connected with the circumstances then occurring in Abraham's family: and we know that there is a further reason given for it by St. Paul, a reason of a spiritual nature, and of which he declares the temporal reason to have been a type or allegory. But although this latter reason may be considered the most important of the two, and in fact the *real* cause of God's interference, yet we are bound to believe the original or temporal reason to have been just and proper in itself. We cannot suppose that Almighty God would command anything to be done that was really unjust or wrong in itself, or would command it for any reasons that were essentially improper or inadequate. What therefore, we ask, were the reasons assigned for this course, in the personal history of Abraham? We are told

that "Sarah saw the son of Hagar, the Egyptian, which she had borne unto Abraham, mocking. Wherefore she said unto Abraham, Cast out this bondwoman and her son; for the son of this bondwoman shall not be heir with my son, even with Isaac." Here there are two reasons specified for the dismissal of Hagar and her son; first, an offence on the part of the child, "mocking," which St. Paul understands in the sense of "persecuting," and in which it is not improbable that the mother was in some degree a partaker: and secondly, there was the object of securing to Isaac the undisturbed possession of that inheritance which God had promised to him; this latter reason being apparently the most urgent of the two. Furthermore, to relieve Abraham's mind of any anxiety about the child and his mother, God gave him a special promise of his own protection and blessing for them.

The question here then is this:—are these circumstances to be taken as showing a principle which may be applied generally? or, are they only of such a special and exceptional character that no general rule can be drawn from them? Practically, that is to say, would any man be justified under similar circumstances in taking a similar course, in the present day,—justified, at least, so far as God's law is concerned? This question appears, at first sight, not very easy to answer with certainty. No doubt, the circumstances *were* peculiar and exceptional. Nevertheless, in all such cases, which are conducted with grave consideration and high authority, and which form the great precedents of history, we must expect to find a principle of action, and a principle which may give us some guidance for ourselves, if only we know how to find it, and to apply it aright.

(1.) Now, in the case here related, one special feature was the position of Hagar; namely, that although she was in one sense, as we have said, a true wife, yet she was of that lower rank which did not enjoy all the social rights of a wife in the higher sense. It is evident, from several places

in the Mosaic writings, (as we shall see again, by and bye,) that concubines were liable to be dismissed on lower grounds than married wives: and therefore this must be taken as a first limitation in dealing with this example as a precedent: it cannot strictly be applied to a wife in the fullest sense of the term, but only to one of that secondary rank, such as was Hagar.

(2.) The actual fault of which she and her son were guilty appears to have been virtually of the same nature as that which is recorded against her, on a former occasion. "When she saw that she had conceived, her mistress was despised in her eyes" (Gen. xvi. 4:) it was a want of that submission and respect which was due from her as a bondwoman to her mistress; and in the latter case it implied also a want of reverence towards Abraham himself and his son, Isaac. The husband's dominion over his wife, and the wife's duty of submission, is a principle inculcated very clearly throughout the Bible, from the time of the Fall, to the days of the Apostles.—But, is the want of this submission sufficient cause to warrant the dismissal of a wife? It would seem a harsh thing to say so; and we certainly would not say it without many qualifications. How much does the husband himself in such cases often need to be reminded of his own duties; of the kindness, forbearance, forgiveness, and love, which he owes to his wife, the weaker vessel! Nevertheless, if matters come to a crisis, if the question must at length receive an answer, if he has shown forbearance to the utmost, and if the wife absolutely refuses to submit; then it seems impossible to avoid the conclusion that this Scripture, if it teaches anything at all upon the subject, does at least show that a separation may be effected without violating the principles of the divine law of marriage.

(3.) Another point of much practical importance here stated is that when Abraham rose up in the morning to fulfil the divine command, "he took bread and a bottle of water,

and gave it unto Hagar, . . . and sent her away." He gave her what appeared sufficient for her immediate necessities; and for the rest, there was God's own promise of protection, to which he confided her. This of course was only just and reasonable; and we need not hesitate to accept this as a principle of general application,—that if a husband is compelled to dismiss a wife, even though it be entirely for her own fault, he should at least make some suitable provision for her maintenance: except perhaps when the fault is nothing less than the crime of adultery, clearly proved against her.

(4.) One fact stated in this narrative is clearly exceptional: Abraham received a direct command from Almighty God to send away his bondwoman and her son. This, of course, could never be pleaded by any man in the present day, except by making a claim to a personal revelation from the Almighty. The nearest way in which a man can approach to this principle is by resisting all inducements or temptations to take such a course, which are of a selfish or doubtful character; and not to do it at all unless he is fully satisfied in his own conscience that it is required by the circumstances of the case, required in the highest interests of himself or his family.

CHAPTER VII.

Amongst the numerous ordinances and enactments relating to Marriage which are contained in the Laws of Moses, we find four distinct laws bearing upon the question of Divorce, or the separation of husband and wife. It will be seen at once that many of the provisions contained in these laws are purely of a local and temporary character, and have no direct application to ourselves in the present day. At the same time the existence of these laws is a fact not to be altogether ignored: and we must be prepared to accept such conclusions as may justly be derived from their presence in this place.

I. The first of these passages is found in the twenty-first Chapter of Exodus, following closely upon the account of the solemn giving of the Law on Mount Sinai.

> *Exodus* xxi. 2. "If thou buy an Hebrew servant, six years he shall serve; and in the seventh, he shall go out free for nothing.
>
> 3. If he came in by himself, he shall go out by himself: if he were married, then his wife shall go out with him.
>
> 4. If his master have given him a wife, and she have borne him sons or daughters; the wife and her children shall be her master's, and he shall go out by himself.
>
> 5. And if the servant shall plainly say, I love my master, my wife, and my children; I will not go out free:
>
> 6. Then his master shall bring him unto the judges; he shall also bring him unto the door, or unto the door post; and his master shall bore his ear through with an awl: and he shall serve him for ever."

These provisions are clearly a part of the system of bondage or servitude which was allowed to prevail among the Jewish nation at that period: and it might appear to some persons sufficient to dismiss them at once from our present consideration on that account. A strict regard for

truth, however, will scarcely be satisfied with this course; and we feel bound to look a little further into this passage, and to see, so far as we can, to what conclusions it must reasonably lead us.

(1.) In the first place, it is in direct opposition to that theory which supposes the bond of marriage to be indissoluble, or to be lawfully dissolved only in the event of the wife's adultery. If that theory were true as a fundamental principle, it must hold good whether a man is rich or poor, bond or free, Jew or Gentile. Here however we find a man not only permitted to leave his wife, but even compelled to leave her, without any conjugal fault on either side, and to leave her in the possession of another man; under the serious alternative of renouncing his own freedom for the rest of his natural life. It is quite impossible, we say then, to believe that God could ever have been the Author of such a law as this, even for a temporary purpose, even for the Jews alone, if that theory were an essential principle of marriage in his sight.

(2.) But we have not yet disposed of this very peculiar provision of the Mosaic Law. No one, probably, can now read these verses without feeling in his own mind that there is a degree of hardness, or even cruelty in them, which does not accord with the character of a Divine Lawgiver; not only that they are wanting in the spirit of Christian kindness, but that their application must have been sometimes in defiance of common humanity.

Now when such a passage as this is brought directly under our notice, how shall we deal with it? Shall we briefly slur it over, and slip away from it, without taking any notice of the serious moral difficulty which is involved in it? Unhappily, we are compelled to say, this is what many expositors have done, and are in the habit of doing, not only here, but with many other places of Scripture, which present similar difficulties, or similar facts in opposi-

tion to their own dogmas and theories. This course is clearly not honest, is not truthful: and we desire most emphatically to protest against it, even if it be done with the best intentions. We have no faith now-a-days in "pious frauds."—No: we prefer rather to acknowledge the difficulty; and to confess that we have not been able yet to find any explanation of it which appears entirely satisfactory. There is no question about the authenticity of the passage, no doubt about the interpretation. Possibly there may be some good explanation yet to be found for it; some considerations in regard to the various laws by which slavery was regulated among the Hebrews, and which may serve to mitigate the apparent harshness of these conditions: but at present, as the passage stands before us, and as we compare it with our modern sentiments about the relation of husband and wife, and the strong affections which may exist between them, even in a state of bondage, we are compelled by the force of truth to say that this enactment does appear harsh and tyrannical, and not consistent with our ideas of a legislation derived directly from the great Creator. Single passages like these,—and they are in truth only single passages, scattered here and there in the whole body of the Sacred Volume,—are not sufficient to overpower the great weight of internal evidence in favour of the divine character of the Bible: but they must be allowed to stand out by themselves for the present; to wait for an explanation which further knowledge, further skill, may yet find for them. And at any rate, whatever effect they may produce upon this important question, whether they tend to confirm our faith in the Bible or otherwise, we say, before all things, let us know the *truth*: we no more want to be deceived on the one side than on the other.

II. The verses immediately following upon the last passage contain another ordinance on the subject of marriage and

separation, and one in which these matters are again mixed up with the conditions of servitude.

> *Exodus* xxi. 7. "If a man sell his daughter to be a maid-servant, she shall not go out, [*i.e.* go out free,] as the men-servants do.
>
> 8. If she please not her master, who hath betrothed her unto himself, then shall he let her be redeemed: to sell her unto a strange nation he shall have no power, seeing he hath dealt deceitfully with her.
>
> 9. And if he have betrothed her unto his son, he shall deal with her after the manner of daughters.
>
> 10. If he take him another wife; her food, her raiment, and her duty of marriage shall he not diminish. And if he do not these three unto her, then shall she go out free without money."

These enactments, though they may not be open to precisely the same charge of apparent cruelty as the preceding, are yet in some respects very much opposed to our modern notions of propriety. In the first place this law refers to the case of a concubine, or slave-wife; and it declares upon what conditions her master may continue to hold her in bondage, or in failure of which, she is to recover her liberty. There are three alternatives given to him, (according to the interpretation of the passage which is now preferred by good authorities:) either, (1) he may cause her to be redeemed by another Hebrew master, (ver. 8); or, (2) he may give her to his son, and treat her as a daughter, (ver. 9); or, (3) if he take to himself another wife, he may allow her to retain her place and her privileges, "her food, her raiment, and her duty of marriage, *τὴν ὁμιλίαν*," (ver. 10). And if he do not take any one of these three courses, then he shall let her go free, without ransom.*

Here again then we have a law which as to its details is clearly of a local and special character; but in which also there are some general principles involved. As before, we find the conjugal union dissolved for certain reasons, which are not very clearly defined, but which at any rate are not limited to the wife's adultery: and here again therefore we

* Vide "The Speaker's Commentary,"—in loco.

must say, if this enactment is made by the direct authority of Almighty God, it shows that that supposed theory of indissolubility is no essential part of his Marriage Law. So much as this at least is clearly deducible from this passage: but inasmuch as the special provisions of this ordinance can hardly be considered applicable to ourselves to any serious extent, and as there is apparently some little uncertainty about the exact rendering of the passage, we need not dwell upon it at any great length in this place. One other point however seems worth noticing. Some persons may perhaps be inclined to think that the conditions of concubinage here described are of a somewhat questionable character, and do not enforce such a strict regard for propriety as is required by our present notions of morality. But the important point is this: the connexion was at least placed under *some* definite regulations; it was not left to the mere lawless passion or caprice of the man himself. And if we are to compare these two states of society,—one, in which a moderate amount of latitude is allowed by the laws, and is not generally transgressed by public feeling, or in common practice; and another state in which greater strictness is nominally professed and enjoined, but is practically and constantly disregarded by every man at his own pleasure, and very often with at least the tacit connivance of public opinion, then we say there cannot be much doubt about which is really the state of the highest and truest morality, or which is the most conformable to the will of God himself.

III. The third passage bearing upon this subject is found in the Book of Deuteronomy; and is, in its general character and principles very similar to the one just quoted.

> *Deut.* xxi. 10. "When thou goest forth to war against thine enemies, and the Lord thy God hath delivered them into thine hands, and thou hast taken them captive,

11. And seest among the captives a beautiful woman, and hast a desire unto her, that thou wouldst have her to thy wife;

12. Then thou shalt bring her home to thine house; and she shall shave her head, and pare her nails;

13. And she shall put the raiment of her captivity from off her, and shall remain in thine house, and bewail her father and her mother a full month: and after that, thou shalt go in unto her, and be her husband, and she shall be thy wife.

14. And it shall be if thou have no delight in her, then thou shalt let her go whither she will; but thou shalt not sell her at all for money, thou shalt not make merchandise of her, because thou hast humbled her."

Here again we have the state of marriage, or rather concubinage, as this is generally considered to be, allowed as before, under certain definite regulations; and also with the power given to the husband of putting an end to it at his own pleasure, with only the condition added that he should in that case give liberty to the woman who had been his captive and bondservant. Here also, as in the former cases, we may say that the particular conditions enjoined have passed away, as a law of temporary force, and have no further concern for ourselves: but yet even here we may find some principles exhibited which deserve consideration.

(1.) In the first place, this ordinance relates to the conditions of warfare, and the sufferings, cruelties, and passions which almost inevitably follow in the train of that great evil. That warfare should exist at all with the toleration of Almighty God, that it should even be sanctioned and commanded to such an extent as we find in the Jewish history, this no doubt is a strange thing, one of the mysteries of religion: but not without very striking analogies and parallels in the world of nature. We do not stop here to explain or defend this mystery. But, such being the fact, the law before us is clearly a wholesome check upon the passions of men, when placed under those particular circumstances. It forbids a man to give way to any mere tempo-

rary passion or lust; but bids him bring home the captive woman to his house; to keep her there a full month, to let her spend her grief in bewailing her father and mother, with all the customary signs of mourning,—"to pare her nails," (or rather to grow her nails,) and so on: and then, and not till then, if he is still so disposed, he may take her for his wife. In all this, then, we say, if war there must be, with the usual concomitants of war, we have no reason to impugn these provisions of the Mosaic Law on the ground of harshness, laxity, or immorality.

(2.) But then comes the concluding portion of the law: "It shall be, if thou have no delight in her, thou shalt let her go whither she will;" and the question is, What judgment are we to pronounce upon such a permission as this? If that theory of which we have been speaking be indeed correct, and if it be true, as divines of the highest authority amongst us have declared, that any intercourse between the sexes which is not absolutely lifelong is no better than fornication, (the one specified cause of separation being, of course, understood,) then we have Moses here again giving his sanction to this proceeding, this great sin; and doing this, not merely in his own name, but as part of those statutes and ordinances which God had commanded him to set before the people. Is God the author of sin? Or can we separate these particular enactments from the rest of that great body of laws in the midst of which they are found? If there were any doubt about the genuineness or the spuriousness of the verses themselves, then it might be possible to do so; but no such doubt has ever been cast upon them by any critics; they must evidently stand or fall together with their context, together with the whole Book of Deuteronomy in which they appear. Clearly, there is no third alternative before us: We must either give up the Book of Deuteronomy altogether, at least as a book of divine authority, and with it we must give up the Book of

Exodus, and the Book of Genesis too; or else we must give up that theory of the indissolubility of marriage as being a part of God's Law.

(3.) But on the other hand, if that theory be abandoned, so far at least as it professes to be a fixed, irrevocable, principle, then we have the simple question before us, whether or not this particular provision of the Law of Moses was, under the circumstances, wise and prudent, most conducive to the welfare and happiness of the two persons concerned, and also consistent with the general principles of morality. That a regard for the woman's position and honour was not neglected is seen in the proviso that her husband should not be allowed to sell her, or make merchandise of her. Was it then better that she should continue in bondage under a master, or a husband, who had no delight in her; or that she should go forth free, without ransom, with liberty to return to her own home and family, and with liberty also, no doubt, to marry again, as a free woman, to another husband? Was it better for the man himself that he should be compelled to keep her against his own will, with all the temptations and with all the power, of treating her with harshness, if not with absolute cruelty; or that he should be allowed to dismiss her, to send her away, not empty-handed indeed, but as other bondservants on gaining their freedom, liberally furnished out of his store, (Deut. xv. 13)? Some persons may perhaps consider the example dangerous to the principles of morality. We venture to think there are good practical reasons for judging otherwise: and at any rate, we have all the authority of Moses, and all that is implied in that great name, in support of this opinion.

IV. But the most important passage in the Mosaic Law on this subject is that in the 24th Chapter of this Book of Deuteronomy. This is important because it deals with the question of Divorce directly and generally, and not merely

with reference to bondwomen or concubines, like those previous laws: and also because the provisions of this law evidently formed the basis of some of our Lord's declarations to the Pharisees and his disciples. As we shall have occasion to consider the effect of Christ's teaching on this subject subsequently, when we come to deal with the New Testament, we shall only in this place notice one or two points in reference to this passage, as it stands in the Law of Moses.

> *Deut.* xxiv. 1. "When a man hath taken a wife and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her; then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.
>
> 2. And when she is departed out of his house, she may go and be another man's wife.
>
> 3. And if the latter husband hate her, and write her a bill of divorcement, and give it in her hand, and send her out of his house; or if the latter husband die, which took her to be his wife;
>
> 4. Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord."

It is necessary to observe here, in the first place, that the sense of this passage, as it appears in the Septuagint Version, is slightly different from our English Version, and is now generally considered by the best authorities to be a more correct rendering of the original. According to this rendering, the whole passage is to be read as one sentence, thus:—"If a man hath taken a wife and dwelt with her, and if she find no favour in his eyes, ... and if he write her a bill of divorcement, and send her out of his house; and if she go and become another man's wife, and if the latter husband hate her and send her away, ... then, her former husband may not take her again." If this Version is to be received, then it would appear that Moses is not here instituting any new system of divorce, but that this proceed-

ing was already a matter of recognised usage; and Moses in this place allows the practice without any general expression of disapproval, but adds a special provision, forbidding the woman's return to her first husband. A little consideration will show that this view is most in accordance with the general character of the passage itself. If it were to be supposed that the practice of divorce had been unknown before this time, and that Moses was now introducing it as a new thing, or at least, was giving a formal sanction to it, such as it had never possessed before, this would certainly be a change in the marriage system of a very grave and fundamental character, and we should expect to find it announced with definite reasons and instructions, and with some of those solemn cautions which are frequently found elsewhere in these Scriptures. But at any rate, whichever view, or whichever rendering of the passage be adopted, it is evident that the permission of divorce is implied in the one just as much as in the other. About this point indeed there is no dispute; the only dispute among the Jews was about the particular circumstances which would justify the dismissal of a wife: they were divided into two parties; one party, the School of Hillel, holding that it might be done for any slight cause, at the will of the husband; the others, the School of Shammai, allowing it only for some positive crime. On this point, the words of Moses certainly do not give any precise definition; perhaps for that very reason just mentioned, viz. that he was not in fact then introducing any new law on the main question, but was merely adding a provision of a subordinate character to a law already in force, and probably at that time sufficiently understood.

At any rate, no definite rule on the subject appears obtainable from the words of this law: and modern expositors apparently find as much difficulty in determining the question as did the Jewish Doctors. One point only is

considered to be quite clear; namely, that the cause of offence, whatever it might be, could not be anything amounting to actual adultery, as that crime is already disposed of, and condemned with the penalty of death.

This being the case, then, as regards this passage, we have nothing further to say upon it at present beyond this: that the Law of Moses did clearly allow the husband to divorce and send away his wife for some reasons, which are not precisely defined, but which were exclusive of the crime of adultery; that this enactment is contained in the Book of Deuteronomy, and so far as we can see, possesses all the authority belonging to any other portion of that Book: that it is consistent with the other facts and laws relating to marriage which are found in the Mosaic writings generally; but that it is altogether inconsistent and irreconcileable with the doctrine that the bond of marriage is by its own nature indissoluble, or may not be dissolved for any other cause than the wife's adultery.

V. There are no instances of divorce or separation, which are of any special importance, mentioned in the succeeding historical Books of Scripture, until we come to the history of Ezra, after the return of the Jews from their captivity in Babylon. This return was effected in several distinct detachments of the people, and with considerable intervals of time between them. The first company returned, by the permission of Cyrus, the King of Persia, (Cyrus the Great,) under the leadership of Zerubbabel, in the year 536 B.C. About 80 years later, (B.C. 457,) another large company returned under Ezra; and it was at this time, very soon after their arrival in Jerusalem, that it was reported to Ezra that many of the Jews,—either of those who had lately returned, or more probably, some who had returned previously,—had made marriages with the "people of the lands," that is to say, with the Canaanites, Hittites, and other idolatrous tribes

who had never been thoroughly extirpated from the country. This proceeding was in direct violation of God's express commandments, repeated on several occasions in the Mosaic Law. It was looked upon by Ezra as a very serious matter; and he accordingly made a very humble confession of the sin before God: the people themselves became deeply impressed with a sense of their guilt; they volunteered at once to put away their strange wives; and Ezra made them to swear "that they should do according to this word." The matter however had gone on to a large extent, many of the Priests and Levites being implicated in it: certain chief men were therefore appointed to act as a Court of Inquiry in the various towns and cities, and they took two months over the business: at the end of which time, all the strange wives, together with the children born of them, were separated from their Jewish husbands. (*Ezra* ix., x.)

About twenty years later, we find the same offence recorded again, and rebuked by Nehemiah; who also took a prominent part in the restoration of the Jews, and the rebuilding of their Temple. (*Neh.* xiii. 23-27.)

Now this history evidently possesses considerable importance in the determination of the question before us. (1.) For first, it derives very great weight from the character and authority of Ezra himself, and from the time and the occasion with which it is connected. The restitution of the Jews to their own land, the rebuilding of the Temple, the restoration of public worship and religion in conformity with the laws of Moses; the revision and publication of all the Sacred Writings extant up to that time, which was accomplished by Ezra himself: all these things were essentially necessary to prepare the way for the coming of Christ, and for the special mission which he was to fulfil, in preaching the Word, first of all, in the midst of the Jewish people themselves. And this particular matter of the separation of the strange wives is described as one of the first things done after their

return, and one of the most important things in the way of reformation, and reconciling the people to their God. And altogether, it would seem that this proceeding was effected by Ezra under divine guidance and inspiration as much as the work of any other prophet recorded in Scripture.

(2.) And therefore, in the next place, we ask, What light does it throw upon this question of Divorce generally?—It brings before us a new reason, different from any of those considered in the preceding sections, for which a wife might be separated from her husband, viz. because she was an idolater, or belonged to one of those particular nations with whom marriage was specially prohibited to the Jews. Now it is important to observe that although this intercourse with the Canaanites was forbidden them for certain specified reasons, namely, to avoid the danger of their being seduced thereby into idolatry, yet we are not to suppose that marriage with a Canaanite, a Moabite, or an Egyptian was a thing essentially void and unlawful in its own nature, such as would be a marriage between father and daughter, or with another man's wife. A separation in such cases as these is not properly a divorce, but a decree of nullity of marriage, —an important distinction which we have already noticed above. (Chapter II. § 2.) But the marriages here in question were not of this character; they were prohibited to the Israelites at a particular period, and as a general rule: but it was not a universal rule, nor one without several exceptions recorded and allowed. For instance, Joseph married the daughter of Potipherah in Egypt; and probably marriages between the sons of Jacob and the Egyptians were common enough during the period of the Israelites' sojourning in that country. Solomon also married the daughter of Pharaoh, without incurring any censure on that account: Boaz, of the tribe of Judah, married Ruth, a Moabitish woman, and became thereby a progenitor of King David. Therefore it is evident that these marriages of the

Jews in the time of Ezra were not in their own nature null and void, but were simply marriages contracted against a special commandment; something like the marriage of a child under age against his father's permission; a thing which ought not to be done, but which, when it is done, is nevertheless held by the law to be a valid marriage in itself. And hence, the separation effected by Ezra was not a mere declaration of nullity, but was truly a divorce, the dissolution of a marriage actually subsisting.

(3.) It remains therefore to enquire into the nature of the reason for which these marriages were dissolved, and to ask how far it may have any practical application for ourselves.

The particular and local reason here referred to, the idolatry of the Canaanites, etc., is, strictly speaking, no longer in existence; though indeed there are still unbelievers and even idolaters of various kinds, unhappily too numerous in the world, even in this age of knowledge, civilization and Christianity. And inasmuch as our own intercourse with all parts of the world has been so greatly developed, especially during this present Century, and this generation, probably the instances in which marriages are contracted between Christians and these unbelievers are not at all infrequent; and therefore it becomes by no means an idle question to ask,—What should a Christian do in such a case? If he finds that either through ignorance, carelessness, or even wilfulness, he has made a mistake herein, and that his own religious principles, his peace, or the welfare of his children are being seriously endangered, does this example of Ezra give him any guidance in such a real, practical difficulty? Ought he to tolerate in his own house, and with his own direct sanction, any proceedings, any principles, or any teaching, which are clearly dishonouring to the God of Heaven, or positively opposed to his own religious convictions?

And it is not only with regard to professed idolaters or

unbelievers that this question applies: but when we consider how many persons there are now-a-days who are indeed Christians in name and profession, baptized members of the Christian Church, but who have really little or no Christian faith in their hearts; who, according to St. Paul's declaration, are virtually "idolaters," covetous, greedy of money, thoroughly selfish and worldly in their disposition and conduct; we must see that the practical application of this question, or of the principle involved in it, is very wide indeed. However, we shall not stop to dispose of it altogether in this place. St. Paul himself gives us some instructions on the matter which we shall have to consider presently: and in order to deal with it properly from a Christian point of view, we must look at it in connexion with some other Christian principles.

But, for the present, so far as we may gather any instruction on the question of Divorce from this passage in Ezra, we must repeat that it does clearly show a fresh reason for separation, a reason which though not precisely the same as those we have considered from the Books of Moses, was nevertheless similar to some of them in one important particular, namely, that it was a reason of expediency, and nothing more: there was nothing to vitiate the marriage in principle; no essential nullity or invalidity in the connexion, no incest, no adultery: but it was simply judged to be more expedient, more conducive to the welfare of one or both of the parties, that they should be separated, and that the marriage should in fact be dissolved: and further, that this judgment and this separation were enforced by the direct command or authority of Almighty God himself.

CHAPTER VIII.

We have examined all the leading passages of the Old Testament bearing upon the question of Divorce; we have endeavoured to draw from them such conclusions as seemed justly warranted by the facts, and no more: and we have claimed for these facts and these conclusions the serious attention and acknowledgment which are due to them,—due at least from all persons who believe these Scriptures to be in any true sense inspired, by direct revelation from the Creator. We now proceed to examine the declarations of the New Testament in reference to the same subject; and we shall endeavour again to look at them truthfully and impartially; to give to each one the full value and importance to which it is entitled; and to discover exactly, or as nearly as possible, how much it does teach upon this subject, how much it does insist upon, and neither more nor less.

I. The first passage that we meet with, and the earliest declaration made upon this subject by the Lord Jesus Christ, is contained in the fifth chapter of St. Matthew's Gospel, in that collected discourse which was delivered by him in the hill country of Galilee, commonly known as the Sermon on the Mount.

> *Matt.* v. 31. "It hath been said, Whosoever shall put away his wife, let him give her a writing of divorcement.
>
> 32. But I say unto you, that whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced, committeth adultery."

Here then, in the first place, there is evidently a reference to the Laws of Moses; just as he had made other references

to those laws in the preceding verses: "Thou shalt not kill: Thou shalt not commit adultery; etc." As we have seen, there are several distinct enactments,—three at the least,—in the Books of Moses, which give a man power to put away his wife, for various reasons: but as our Lord does not here specify any one of those enactments in particular, we may perhaps understand him as referring, either, more especially to that in the 24th of Deuteronomy, which is the only place that makes any mention of the "bill of divorcement"; or else to that general usage which appears to have prevailed, with the sanction of the laws, even anterior to that special statute. But, at any rate, whatever the reference, it seems clear that Christ here intended to put some sort of restriction upon the law, as it was then understood—"But *I* say unto you": the pronoun is emphatic, and clearly marks an opposition or antithesis between the ancient law or custom, and the new principle he was then going to enunciate. And it was not a slight restriction that he was here imposing: it made a difference of a very wide and deep character. The reasons for which divorce was allowed under the Mosaic Dispensation, as we have already observed, were not indeed very clearly defined; but at least they included some other matters, and probably many other matters, besides the wife's adultery. Here however, our Lord appears to sweep away all these minor or general causes, every consideration of mere convenience or expediency, and to allow one reason only for the separation; and that one, on the ground of a fundamental principle, because the marriage bond is itself thereby essentially vitiated and broken.

There appears then to be a serious discrepancy between the principles upon which Marriage is treated in the Laws of Moses, and in these words of Christ: it is such a difference as we should not expect to find between two Teachers, who,—whatever be their relative authority,—both profess to be sent by the same supreme God: especially also when

Christ had just declared, in this same discourse, "Think not that I am come to destroy the Law, or the Prophets; I am not come to destroy, but to fulfil.' (*Matt.* v. 17.) But, such being the case, our plain duty is in the first place to recognise the difference as a matter of fact, to estimate it, as near as possible, at its true value, neither seeking to conceal, nor to exaggerate the difficulty; next, to see what explanations may be found to soften or remove the apparent discrepancy: and lastly, whatever portion of it we cannot satisfactorily solve, to leave this, as in other cases, for other commentators, more learned and more skilful, to dispose of as best they can.

II. Now there is one consideration which ought not to be overlooked in reference to these declarations of the Sermon on the Mount. Jesus Christ was not here giving absolute laws, either to the Jewish nation, or to his own disciples; he was not exercising power, as an earthly Sovereign, promulgating a Code of Laws, which was to be enforced upon mankind by any external authority: but his precepts and his principles were addressed to his hearers and followers personally, addressed to their consciences, to their hearts: they were spoken in the way of exhortation and persuasion, warning and encouragement. They therefore set up a high standard of morality and purity, faith and obedience; higher than anything that was strictly commanded by the letter or the Law; yet not on that account contradicting the Law itself, in its spirit: a high standard which we may all aim at, for ourselves, though we may not attempt to enforce it, as a positive law, with its penalties attached, upon others. This is an important distinction which has been too much lost sight of in Christian Churches and communities generally, all through the history of Christendom; but the principle itself is seen clearly enough in many of the precepts contained in this Discourse, and especially in some of those

immediately preceding and following the verses which we are now considering: "Whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart."—"If thy right eye offend thee, pluck it out; whosoever shall smite thee on thy right cheek, turn to him the other also." These we say are exhortations addressed to the consciences of men: but it would be an obvious mistake to attempt to *enforce* them as absolute laws, with temporal penalties for neglecting them. And to some extent, this consideration may no doubt be properly applied also to the precept about Divorce: that is to say, the precept may be addressed as a personal caution to any individual Christian, but not imposed as a general law of the Church, still less of the State. The law of the Christian Church would then at least be made less at variance with the laws of Moses than is now the case.

III. But it must be confessed, even this consideration does not entirely remove the difficulty with which we have to deal. For the essence of the difficulty here is this, that the words of Christ appear to condemn, as a matter of principle, things that had been positively allowed or commanded by God himself. "Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery."* This is not stated as merely a new regulation, intended to take effect for the future only; but it is pronounced as a fundamental truth, a principle which if true at all, must be true always; which must have been

* Gr. *ποιεῖ αὐτὴν μοιχᾶσθαι.* The "Revised Version" of the New Testament has changed the above very exact and intelligible rendering of the Greek into the words, "maketh her an adulteress." Inasmuch as the chief aim of the Revisers appears to have been generally to exhibit a more precise and literal representation of the original language, —an object for which they have sacrificed so much of the sound, strong sense and beauty of the old "Authorized Version," this needless departure is the more unaccountable.

true in past ages as well as in the present, —though possibly the world in general might not have known it. But God knew it: and we are compelled to ask, first, Did Abraham cause Hagar to commit adultery when he sent her away? And not only this, but another question also, which is still more serious: Did God himself intend to lay upon Abraham the guilt of this grave crime, when he commanded him to send her away, without any charge of unfaithfulness? Again, Did the Hebrew master cause the bondwoman whom he had purchased, or whom he had taken captive, to commit adultery, when, in obedience to the express provisions of the Law, he simply gave her liberty to go forth, without ransom, whither she would? Or the husband, who with the sanction of the same Law, gave his wife a bill of divorcement, of such an effect, that she might go and be another man's wife? Or those Jews who, under Ezra, were compelled to put away their strange wives,—did they become thereby responsible for the guilt of this same crime? And adultery, be it observed, was a crime under the Mosaic Law punished with death: "the adulterer and the adulteress shall surely be put to death." (*Levit.* xx. 10.)

These are certainly grave questions; and questions that are not easily answered. And yet, they want to be answered, because they are eminently practical questions. They are not, like many other disputed points in theology, merely speculative, or dealing with spiritual and metaphysical problems which are in their own nature beyond the range of our apprehension, which perhaps can never be fully answered in this world, and which therefore are not urgently necessary to be answered. On the contrary, we say these are altogether practical questions,—of immediate practical importance. It is a matter of great importance that we should know whether divorce and separation between man and wife are ever permissible by the law of God; and if permissible at all, under what circumstances: or in what

cases the guilt of adultery is thereby incurred. And it is also very important as we have before observed, that we should know whether the whole Law of Moses,—Moral, Civil, and Ceremonial,—together with all the history of the Patriarchs, and all the moral principles inculcated therein,—whether all this is entirely superseded and annulled by the Writings of the New Testament: and if not the whole, then, how much of it. How much of this may a man read as the Word of God, the Word of Truth,—"read, mark, learn, and inwardly digest," as the food of his spiritual life, the guide of his footsteps through the difficult ways of this world; and how much must he carefully shun as the very poison of his soul? For this indeed it is, if the doctrines and theories of our modern Teachers on this subject of Divorce, and on several other points connected with Marriage, are right.

IV. It was probably about a year or two after the delivery of that discourse in Galilee that the question of Divorce was again raised by the Pharisees, as related in the 19th chapter of St. Matthew's Gospel. The uncertainty hanging about that enactment in the 24th Chapter of Deuteronomy appears to have made this a favourite problem with the Schoolmen and casuists of those days: and the Pharisees naturally thought it a good weapon wherewith to try the skill of Jesus of Nazareth, and possibly to damage his reputation as a Prophet. Perhaps if the question had been put to our Lord in a more sincere spirit of enquiry, it might have drawn from him some fuller information and directions on the various intricate questions connected with this subject of Divorce;—questions which have so much perplexed and divided learned theologians, lawgivers, and moralists in all ages of the world: and on the first view of the matter, we may be tempted to regret that the opportunity was lost of obtaining this further guidance from one who was capable

of giving it so precisely and so completely. But when we come to reflect how apt the perversity of men has always been to dwell upon the mere letter of any law, or any statement of divine truth, and to neglect the spirit of it, we may well believe that there was good reason for leaving even this question of Divorce, like so many other important questions in theology, in some degree of apparent uncertainty, without those fixed definitions and rules which we are so anxious to formulate.

The account of this discussion with the Pharisees is given both by St. Matthew, and St. Mark, and very nearly in the same words. As these passages are perhaps the most important of any that are found in the New Testament dealing with this question, and are generally referred to as the leading authorities on the subject, it will be desirable to examine them carefully.

St. Matthew's account is as follows :—

Matt. xix. 3. "The Pharisees also came unto him, tempting him and saying unto him, Is it lawful for a man to put away his wife for every cause?

4. And he answered and said unto them, Have ye not read that he which made them at the beginning made them male and female,

5. And said, For this cause shall a man leave father and mother, and shall cleave to his wife and they twain shall be one flesh?

6. Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

7. They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away?

8. He saith unto them, Moses, because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so.

9. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whoso marrieth her which is put away doth commit adultery.

10. His disciples say unto him, If the case of the man be so with his wife, it is not good to marry.

11. But he said unto them, All men cannot receive this saying, save they to whom it is given.

12. For there are some eunuchs which were so born from their mother's womb: and there are some eunuchs which were made eunuchs of men: and there be eunuchs which have made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive it, let him receive it."

St. Mark introduces the subject by saying, "The Pharisees came to him and asked him, Is it lawful for a man to put away his wife, tempting him."

Both Evangelists then are agreed as to the motive with which the question was put to Jesus, that it was with a view to embarrass him with a difficulty.

There is however a slight difference in the scope of the question as given in the two narratives. St. Mark states it as if it implied a doubt about the dissolution of marriage under any circumstances. "Is it lawful for a man to put away his wife?" St. Matthew adds the phrase "for every cause," κατὰ πᾶσαν αἰτίαν, which appears rather to assume that such a thing was lawful for some causes, and to ask for a definition of the particular causes which would make it lawful. There is also, no doubt, in these words, an allusion implied, if not expressed, to that law in Deuteronomy, and to the existing controversy connected with it. The answer of our Lord however, according to St. Matthew, does not go at once to the Law of Moses, but refers to the original institution of Marriage as described in Genesis. "Have ye not read that he which made them at the beginning made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife; and they twain shall be one flesh."

V. Now in these words, as we have already observed, there is contained a mystery, some hidden spiritual truth,

which is not easy to be explained, or at least for which a have no complete interpretation given us by authority. We have the conjectures of Commentators, and we have even the Decrees of Councils: but so far at least as we are concerned, here in the Church or the Realm of England, we cannot accept these things as having any absolute authority over us, except so far as they are found to be supported by the general testimony of Scripture. Any interpretation of this expression, and especially any practical conclusion derived from it, if it is not self-evident, and plainly derived from the words themselves, must be subjected to this test: Is it in conformity with the other facts and declarations of Scripture in reference to this same subject? We have seen the deduction drawn from the words by the Council of Trent, and adopted also by many other high authorities; viz., that hereby, the bond of matrimony is declared to be "perpetual and indissoluble": we may admit that this inference is not unreasonable in itself, as drawn from the original words in Genesis, and strengthened by the further declarations of Christ: but at the same time, we cannot lose sight of those various facts in the Old Testament which stand out so directly in opposition to this doctrine; facts which *must* be taken into account, unless we are prepared to abandon all faith in the truth and authority of those earlier Scriptures.

And it was this consideration which naturally prompted the rejoinder of the Pharisees, when they asked, Why then did Moses command to give a writing of divorcement, and to put her away?

The solution of the difficulty, if it is to be found at all, must evidently be found in the answer to this question. "He saith unto them, Moses, because of the hardness of your hearts, suffered you to put away your wives: but from the beginning, it was not so."

"Moses suffered you to put away your wives." Here

then, in the first place, we may note the *fact* which is admitted by our Lord himself; that this enactment was a genuine part of the Mosaic Law; he does not deny the authority of the commandment, nor yet its effect: it amounted at least to a permission to put away their wives for some cause or other; and evidently for some other causes independently of that which he mentions immediately afterwards, the crime of fornication or adultery committed by the wife.

VI. But next,—and this is really the important point,—how does our Lord explain the existence of this law? It was given, he says, as a concession to their "hardness of heart": it was not part of the original law of Marriage, it was a decided variation or divergence from that law, and therefore it was not strictly in accordance with that declaration which had been spoken by Adam in Paradise: "from the beginning it was not so."—No, indeed: for in truth the state of things in the world, and especially the relations of men and women towards each other, have suffered a very material change since those days of Paradise: and this law, like many other laws,—we might almost say, like every law that has since been given to man,—has been made necessary by this altered state of things, and is adapted to the condition of the world as it now exists. One of the most immediate consequences of the first transgression, as we are distinctly told, was this:—The Lord God said unto the Woman, "Thy desire shall be, [or, shall be subject,] to thy husband; and he shall rule over thee." The perfect love which originally subsisted between them, and which would have raised no question of superiority or dominion on the one side or the other,—this was broken: the seeds of sin and selfishness were sown, seeds which would afterwards produce the bitter fruit of strife and even hatred between those who should be one in heart and soul, as well as "one

flesh": and therefore, while this state of things should endure, it became necessary to provide for it accordingly, and to allow sometimes even of separation, under certain conditions, as one among many other accommodations to human infirmity, perversity, or "hardness of heart." It is not a perfect state of things; far from it: the world is altogether very much "out of joint"; and Christ came, as we believe, to set it right, to teach men to aim at a more perfect state of righteousness: and among other things, to strive to keep this bond of marriage in its pristine holiness and integrity. But in the meanwhile, until that restitution of all things is fully accomplished, until human nature is restored to its original righteousness, it cannot endure all the laws of Paradise: and any attempt to insist upon those laws, to force them upon mankind generally, can only be vain, futile, and in some cases even mischievous.

Now we venture to say that if the words of Christ are accepted in this sense,—that is to say, as simply pointing out what is the most perfect system, but not as intending to withdraw the concessions which had been formerly allowed, and not giving authority either to his own followers or to any one else to abrogate those laws all at once,—this interpretation, even if it does not entirely remove all difficulties, will at least obviate some of the most serious which now beset us in dealing with this matter. It will be in harmony with the facts of the Old Testament, with the nature of Christ's own teaching generally, and with other references to this subject in the New Testament: it will be consistent with the highest aspirations that any man can cherish, in seeking after perfect righteousness for his own soul; at the same time it will be adapted to the present condition of human nature, it will recognise the infirmity of some men, and the just personal liberty of all.

But before proceeding to deal with this practical part of the question, we have still some other declarations of

Scripture to consider. And first we must return for a few moments to these passages in St. Matthew and St. Mark.

VII. The remaining portion of this discourse, according to St. Mark's account, was addressed by Christ, not to the Pharisees, but to his own disciples, when they asked him again of the matter, in the house. (1.) To them he said further, "Whosoever shall put away his wife, (except it be for fornication,) and shall marry another, committeth adultery." This is not a mere repetition of what he had said before in the Sermon on the Mount; it does not refer to the case of Divorce simply, as that declaration had done, but introduces a new condition: "Whoso shall put away his wife, *and marry another;*" intending probably to designate a case where there is a connexion between the two things, *i.e.*, where a new wife is taken immediately upon the dismissal of the former one: and of this, Christ says, not merely as before, that the man thereby causeth her to commit adultery, but that he himself committeth adultery. Now although perhaps there is no case positively recorded in the Old Testament where such a thing as this was done, and no law expressly giving a sanction to such proceedings, yet we can hardly help saying that with the facilities for divorce contained in the Older Dispensation, and its free allowance of polygamy, such a case as Christ here speaks of must no doubt have frequently occurred, and apparently with the full sanction of the law then in force. And here therefore again, though the discrepancy is not so strong and pointed as before, yet we are bound to say there is still some degree of discrepancy apparent; that is to say, Christ condemns as a matter of principle, as a crime of adultery, a proceeding which is at least not clearly condemned under the Law of Moses.

The rule here laid down by Christ appeared to his disciples so stringent that they ventured to observe, If the case of the

man be so with his wife, it is not good to marry. And looked at as a practical matter, it cannot be denied that there is much reason for the observation; that is to say, at least, if it is an essential principle of Christianity to enforce this as an absolute law, without exception. There are in truth many other faults, besides the one crime of adultery here specified, which may make the bond of marriage, not only incompatible with the comfort and happiness of the parties, but sometimes absolutely intolerable. Without stopping however to go into details upon this matter at present, it is enough to say here that numerous cases of the gravest character are continually and notoriously occurring; sometimes where the life of a woman is a constant state of suffering, or even of actual danger, from the brutality and violence of a husband; sometimes when the wife herself is chiefly in fault,—a slave of drunkenness, extravagance, or ill-temper: cases, in which not merely the peace and prosperity of the family are at stake, but where their whole welfare in every way, moral and social, must be inevitably ruined, unless the offending parent, whichever it is, be separated from them. In such cases as these, not by any means imaginary cases, nor yet of rare occurrence, but such as may be found recorded in the public Papers every day of the year, besides those many others which are not brought to the knowledge of the public, if it is indeed not possible for the man to put away his wife, or the wife her husband, without incurring the very grave charge of adultery, then certainly we are compelled to say with the disciples, It is not good to marry: and knowing the uncertainty of human life and character, knowing the ill effects which adverse circumstances may produce upon the disposition and habits of those who at present may seem altogether virtuous and amiable, any man or woman might justly hesitate to enter upon this inextricable bondage,—if they knew that they must absolutely take each other, "for better or for worse,"

for all the rest of their lives, without any possibility of escape or relief.

And yet, what is the alternative—the alternative to Marriage?—We know what is the alternative taken by many men. We know that this law of indissolubility has been applied by the authorities both of the Church and of the State with so much strictness, that many men have said, It is better not to marry; they have refused to put themselves under this doubtful yoke; and have satisfied their natural instincts and appetites on easier terms: generally, no doubt, —though perhaps not always, —at the sacrifice of their consciences. But this is not the alternative which can be contemplated with satisfaction by any sound moralist; not by any preacher of the Gospel of Christ; certainly not by Christ himself. How then did he reply to the objection of his disciples, that if such a fixed rule were to be enforced, it would be almost necessary, as a matter of common prudence and safety, for many men to abstain from marriage altogether? "But he said unto them," writes the Evangelist, "All men cannot receive this saying;" that is, cannot adopt this principle of abstaining from marriage; "save them to whom it is given." There are some exceptions, some by birth and natural constitution, some by the effect of a barbarous practice not uncommon in those days; some who have voluntarily sacrificed all the love of this world, all its appetites and indulgences, for the sake of the kingdom of heaven. And he adds, He that is able to receive it, let him receive it. He that has faith enough, and spirituality enough to surrender all present desires of the flesh, to devote himself entirely to the love and the service of his heavenly Father, let him do so.—Yes, indeed: let him do so! He could not say less than this, he who came to teach men to be willing to forsake all their riches in this world, in order to lay up treasure in heaven; who taught them not merely by words, but by his own great example, to take up their cross

daily and to follow him. He that is able to receive all these lessons, he that has *capacity*, largeness of heart and depth of soul enough to hold all these mighty thoughts, hopes and duties,—let him receive them, let him hold them, and cherish them.

VIII. And so also may the Ministers of Christ preach the same lessons of righteousness and self-denial to the world, with all the earnestness of their Master, and if possible, too, with something like his self-devotion, showing forth in themselves an example of the lessons that they preach. We shall not complain of them for doing this. But let them at the same time remember what Christ said on the other side: "All men cannot receive this saying"; it is not within their power, within their constitution of body or soul, to resist the claims of Nature, to forego the many advantages and conveniences, moral, social, and physical, which belong to the state of marriage. This method of escaping the difficulty, therefore,—by abstaining from marriage altogether,—is not applicable to the bulk of mankind generally. And yet he does not dispute the existence of the difficulty, he does not deny that there are other causes, outside the question of adultery, which may make the bond of marriage intolerable, or worse than no marriage at all. Nor does he say positively, as the Church virtually says now in his name, that men must take their chance of these troubles, and bear them as well as they can; that there is no remedy whatever possible for them. It would be a very serious imputation on the character of the Christian Religion, if this were indeed a genuine part of its teaching, if this were its fixed and irrevocable law. But we venture to say that the words of Christ in this passage, such as they are delivered to us, cannot justly be saddled with this meaning. Whatever he said,—and we should have been glad to have had a fuller account of his words,—but one thing at

least is clear:—He did recognise the conditions of human life, the imperfections, the frailties, the necessities of human nature, such as it now is in point of fact; and he made allowance for these things. He set forth before the eyes of men, no doubt, as we have said before, a high standard of righteousness, the very highest of all indeed:—"Be ye therefore perfect, even as your Father which is in heaven is perfect": but after all he said,—yes, after all, for these were his final words upon the matter,—"*He that is able* to receive it,—let him receive it."

This then brings us again to the same conclusion at which we have arrived before, both upon the consideration of the first passage in the Sermon on the Mount, and also on the former part of this discourse, which was addressed to the Pharisees. As a matter of fact, Christ did not institute any new law upon this subject. He did not abrogate the Law of Moses, though he pointed out its special character; not that the law itself was imperfect, but that it was adapted to the present imperfect state of human nature. When this imperfect state is removed, when mankind have been regenerated by the Spirit of God, and so far as they may become regenerated by this power, then indeed they may be able to obey the higher laws of righteousness which the Gospel inculcates; but they will obey them, not merely as *laws*, from the fear of punishment, not in the spirit of bondage, as of old; but in the free spirit of obedience and love. But for the present, *as a matter of fact*, whether for these reasons, or for any other similar reasons, but as a matter of fact, we say, Christ did not establish any new law upon this subject of Divorce, not any new law, as a matter of absolute obligation, either for his own followers or for the rest of the world.

And we say further, with great confidence, that the duty of Christ's Church in such matters is to follow as nearly as possible in the steps of her Divine Master; and while she

does not hesitate or neglect to set forth all that he has clearly given her to teach, yet that she is not to go beyond the line of his commandments; she is not to make laws, or to insist upon principles of a more stringent character than are reasonably warranted by the words of Christ himself, or his own inspired Apostles. It is a mistake that has often been made in the Church, in all periods of her history: even in the earliest days, some Christians were over-zealous in imposing these conditions of spiritual slavery upon their brethren, converting what might have been very good and useful, as optional customs, into rigorous obligations. "Ye observe days, and months, and times, and years," says St. Paul: not that there was any harm in any man's doing such things for himself; but that there was great harm, a fatal mistake, in making these things a law for others. "Stand fast, therefore, (he adds,) in the liberty wherewith Christ hath made us free; and be not entangled again with the yoke of bondage." (*Gal.* v. 1.) Those who see the necessity for observing these laws of marriage in their utmost stringency, and who are able to fulfil this obligation in their own persons, let them do it, by all means: but let them not assume the right to bind other men's consciences with the same fetters; let them not do this, at any rate, beyond the plain letter of God's Word, or the manifest necessities of social intercourse.

CHAPTER IX.

This view of the question, however, which we have put forward in the last chapter, is not that which has been generally adopted by the Church; and we are prepared therefore to find that many persons will take exception to it, on various grounds. Some probably will object to it as not paying sufficient attention to the words of Christ: some also as tending to relax the bond of marriage to a degree which would produce serious mischief to the moral habits of Society. The former of these two classes of objections is the one which we are most concerned with at this point; the moral and social effects being left to be more fully considered subsequently.

I. First then, if any persons object to this conclusion, viz. that Christ did not intend positively and immediately to abrogate the Mosaic Law on this subject; if they maintain that his declarations in both places must be taken as absolutely overruling those earlier laws: then we must ask them in the first place to find some better solution of the various difficulties by which the question is surrounded; the difficulty of reconciling such a strict application of Christ's words with the various facts and laws of the Old Testament; the difficulty of reconciling it even with his own admissions as to the frailty of human nature, and the concessions required on this account; and the very practical difficulty of meeting the various cases that arise, such as we have briefly alluded to, cases of cruelty, depravity, etc., which imperatively demand attention, and which seem to require nothing less than separation, or dissolution of the marriage bond. We must ask them also to show that our Lord on

these occasions was exercising authority as a Lawgiver, such definite authority as would be necessary to repeal the very definite statutes of the Mosaic Code;—statutes which had been given absolutely by the voice of the Lord God himself; written,—some of them,—with his own finger on Tables of Stone. We do not question that the Lord Jesus Christ did possess authority to repeal even these statutes: but we say that he would have clearly shown his authority,—he would have been bound to show it, in justice to the Jews themselves,—if he had intended positively to do so; and he would also have clearly shown his intention at the same time. Where then is this shown in the Gospel histories of his own life on earth? Where is it shown that he gave such authority to his Apostles in reference to this particular matter? Where does it appear that they exercised this power in any formal manner, as we know they did in regard to some other ordinances? Or that these Mosaic laws were in point of fact abolished or disregarded in their time?

II. But if it is said that the mere expression of Christ's judgments in such a matter ought to be sufficient to command obedience from all his followers, even without any express enactment or law; that this of itself ought not only to be accepted as a virtual law by individuals, but that it is sufficient to warrant the Church in making positive laws to the same effect; if this is the view held by the Bishops and Rulers of the Church, as practically no doubt it is: then we must ask them at least to deal fairly and impartially with all the facts of Scripture on this subject; and especially with those declarations of Christ himself, for which they claim such strict obedience. Now we have briefly shown, (Chapter V. § 1,)—and we could produce a more complete argument to the same effect, if it were necessary,—that his words in the 19th of St. Matthew do not anywhere condemn the practice of polygamy; and that

in truth there is no condemnation of it to be found in any part of the New Testament. Let the Bishops, then, give due recognition to this fact: if it is a fact which cannot be disputed, then it certainly ought to be known as such, whatever it may be worth. And if it is a fact which is not generally understood by the world, then so much the more does it become the duty of all who profess to teach the Word of God to men, and especially of the Bishops, who claim the highest authority in this matter,—so much the more we say does it become their duty, from a simple regard for truth and honesty, to make this fact plain to the world.

There is an important principle involved in this matter, one that is often recognised in the discussion of other theological questions, though perhaps not so generally or universally as it ought to be; and which has certainly been very much neglected in regard to the laws of marriage. It is the principle of taking a complete and impartial view of the teaching of Scripture in reference to any particular subject, and not building our theories too much upon single or isolated expressions. Any book whatever that is written with a serious purpose, and is not merely of a superficial character, may fairly claim to be treated in this way, and cannot be properly appreciated otherwise. And the Bible is certainly entitled to this treatment, if indeed there is any real unity in the book, and if it is not a mere chance collection of unconnected documents. And this consideration is all the more important here, if the Bible is derived, as we believe it to be, from the great Author of Nature. If this is indeed the case, then we must expect to find a substantial harmony between the two things, the laws of Scripture and the laws of Nature; between the principles on which the constitution of mankind is framed, moral and physical, and the principles by which they are to be governed. But this perfect harmony can only be found by

a *complete* apprehension of the two parts of God's work, Creation and Revelation: the better we understand them both, the more perfectly, no doubt, we shall see the agreement between the two. At present, there is an evident tendency to mutilate both of these things; to disregard or disparage some very essential elements in the constitution of human nature; and at the same time to ignore the corresponding truths which are so plainly contained in Holy Scripture: and the result is that a perpetual conflict is produced between the two, with a great amount of mischief and suffering: simply because an imperfect moral law is put before mankind, a mutilated law, which is inconsistent with their nature, and which they are in fact unable to obey.

III. We repeat then that our Lord did not pronounce any condemnation of polygamy. The nearest approach to such a thing that can be found in any words of his is that declaration in the 9th verse of this 19th of Matthew, "Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery." But this, as we have before said, is no condemnation of the man who *does not* put away his wife, but who marries another in addition: this dictum does not include his case at all in its purview. The practice is objected to in the case of Bishops and Ministers of the Church, for special reasons which are very obvious and intelligible: but, for Christians generally, there is really no limitation of it imposed by Scriptural authority, except such as is required on the grounds of temperance, and considerations of that nature: it is not condemned as a matter of principle, as being fundamentally opposed to the law of the Gospel.

And such being the facts of Scripture, we say also that the practice is adapted to the constitution of human nature; that there are many cases where it might be adopted with advantage, many where it is absolutely required; that is to

say, where a man cannot live in a state of righteousness and honesty without it. To some men it is given to do so ; but not to all men : and the reasons for this are too obvious and too well understood to need further argument on the point.

And the permission of this practice, (under proper conditions and safeguards, of course,) would evidently be in many cases a compensation for the strictness of the law against divorce. The truth is indeed, that divorce is much more objected to in Scripture than is polygamy itself; and there are obvious practical reasons for which any great liberty in the direction of divorce would be a greater evil than in the direction of polygamy. It so happens, however, that at the present time there is in this Country a considerable amount of prejudice existing against this particular practice, much more than against the principle of divorce. What is the origin of this prejudice is a matter which is perhaps not very generally understood. There seems to be good reason for believing that very much of it is owing to the early history of the Christian Church, when it was beginning to make its way with the authorities of the Roman Empire ; and when it not only exerted its own influence on the external world, but also received a good deal of influence from that Temporal Power. The liberty of divorce, we know, was at that period allowed to the Romans very freely ; but at the same time, polygamy, in the strict sense of having two or more wives, was strictly forbidden by the Imperial laws : and the Church appears to have been rather compelled by the Civil Power to give up the practice ; retaining, however, as some say, the customary practice of concubinage in place of it.

IV. But, however this may be, whatever be the origin, or the history of the prejudice which now exists, two things are very clear : first, that the practice is not condemned in the Bible itself ; and next, that the prejudice against it does

exist very widely and very strongly in this Country at the present time; and that any person who ventures publicly to defend it, is likely to bring down a good deal of this prejudice on his own head. Now in the course of these pages we have made some strong appeals, addressed to all persons who are specially responsible in this matter, to uphold the cause of Truth, to acknowledge the Truth, whatever it be, as a matter of fact, whether a fact of history, or a fact of Scripture; and we say that TRUTH, before all things, must be the foundation of all true Religion; that every other consideration ought to give way before the claims of this paramount principle. And we must be allowed to place this appeal most especially and most directly before the Bishops of the English Church. They hold the highest position as accredited teachers of the Gospel among us; they hold this position with all its advantages and its emoluments; and they hold it with all its difficulties and responsibilities. Great indeed will be their responsibility if they wilfully refuse to look at the Truth, or to set it forth before the people, according to the best of their understanding. We ask them therefore to deal with this question of Polygamy, and in this unflinching spirit of truth and honesty: we ask them either conclusively to disprove our assertion, namely, that it is not condemned by any authority, any text, of Holy Scripture; or else, to make a due acknowledgment of this fact; and such an acknowledgment of it, so plain, so public, as shall, if possible, effectually correct the prevailing errors on the subject. And in pressing this claim upon the Bishops, while we admit the difficulty which it imposes on them, the great amount of prejudice and perhaps obloquy to which it may render them liable, if they fulfil the obligation; yet at the same time, it is impossible not to see the imputation to which they will be subject if they neglect the appeal: it will be said that they are afraid to acknowledge the fact, from fear of this popular

prejudice ; that they have more regard for their own personal interest and convenience than for the claims of Truth. That there are many persons in the Country, and persons of considerable weight and position too, who do not hesitate even now to bring this charge against them, is indeed only too true. Here then is an opportunity for them to take a great step in refuting the charge, if it is false ; or, on the other hand, in confirming it, if it is true.

At present it is clear that they are not dealing fairly and impartially with the facts of Scripture. They interpret one part of Christ's declaration,—that against divorce,—in the strictest sense, in a sense which is scarcely supported by the other passages of Scripture, or by its general tenor in reference to this question : they embody this very strict sense in a fixed law which is rigidly enforced, not only among members of the Church itself, but which in fact governs the whole national legislation on the subject, and binds every member of the community. At the same time, they do not leave open those other alternatives which Christ himself left open,—that liberty of polygamy which he did not condemn, which he so remarkably abstained from condemning. It may be that the Bishops, like many other people, think this practice objectionable in itself,—mischievous,—inexpedient. That opens up a totally different question, a distinct subject of enquiry, on which we shall be prepared to meet them at the proper time. But for the present at least, we say, they are not guided solely and entirely by the plain language of Scripture ; they do not treat this Book as one of supreme, divine, authority. If it is divine, they have no authority to set aside any part of its teaching ; to select one precept, and to reject another. If it is divine, they must not question its perfect holiness, righteousness, or morality. If it is divine, they certainly cannot improve upon it.

V. And we must carry this argument with the Bishops yet

a step further. If they insist upon this strict application of Christ's words concerning divorce, on the ground that every precept of his ought to receive the unqualified obedience of all Christians, we do not indeed deny the justice or propriety of this principle: but we must ask them to be consistent in carrying it out generally; not only in the particular matter of polygamy of which we have just spoken, but in many other very plain and positive commandments delivered by his own mouth.

We need not go far for examples. His first declaration on the subject of divorce, as we have seen, was delivered in the Sermon on the Mount: and here are the two verses immediately preceding that declaration:—"If thy right eye offend thee, pluck it out, and cast it from thee; for it is profitable for thee that one of thy members should perish, and not that thy whole body should be cast into hell. And if thy right hand offend thee, cut it off, and cast it from thee: for it is profitable for thee that one of thy members should perish, and not that thy whole body should be cast into hell." (Matt. v. 29, 30.) These are very plain precepts and very direct; there is no ambiguity about their meaning: and they are enforced with a very plain and powerful argument. But has any Bishop in our day ever obeyed them to the letter? or taught others to do so?—Perhaps they prefer to interpret the precept according to the words of a popular Commentary: "The 'right eye' and 'right hand,' the most valuable of our members, represent sometimes our strongest propensities and habits, sometimes our most precious earthly possessions. Whenever these become inlets to temptation, or the instruments of sin, they must be mortified or surrendered, or we perish." Very true, indeed, so far as it goes; but it does not go so far as the words of Christ himself. No: we ask, in the stern, literal, sense of the original, Has any Bishop of modern days, in England, actually plucked out his own right eye, or cut off his own right hand, rather

than be led into sin thereby?—Really, one can hardly ask such a question without seeming to trifle with these grave matters: the idea of a Bishop doing such a thing now-a-days, (as everybody will say,) is simply absurd, ridiculous. And yet, it was not always so. There is at least one memorable example before us, of a Bishop of our own Church who did act up to this precept, to the very letter.* But where are the CRANMERS of the Nineteenth Century?

Again, but a few verses further on in the same chapter we read, "But I say unto you, That ye resist not evil; but whosoever shall smite thee on thy right cheek, turn to him the other also. (ver. 39.) . . . . Give to him that asketh

* Immediately before his execution at the stake, (March 21, 1556,) Cranmer made this public declaration. He said, "That he was well apprised of the obedience which he owed to his Sovereign, and the laws: but this duty extended no farther than to submit patiently to their commands, and to bear, without resistance, whatever hardships they should impose upon him: That a superior duty, the duty which he owed to his Maker, obliged him to speak truth on all occasions, and not to relinquish, by a base denial, the holy doctrine which the Supreme Being had revealed to mankind: That there was one miscarriage in his life, of which above all others he severely repented, the insincere declaration of faith to which he had the weakness to consent, and which the fear of death alone had extorted from him: That he took this opportunity of atoning for his error, by a sincere and open recantation; and was willing to seal with his blood that doctrine which he firmly believed to be communicated from heaven: And that, as his hand had erred, by betraying his heart, [that is to say, by signing that false declaration,] it should first be punished, by a severe but just doom, and should first pay the forfeit of its offences." He was thence led to the stake, amidst the insults of the Catholics; and, having now summoned up all the force of his mind, he bore their scorn, as well as the torture of his punishment with singular fortitude. He stretched out his hand, and without betraying, either by his countenance or motions, the least sign of weakness, or even of feeling, he held it in the flames till it was entirely consumed. His thoughts seemed wholly occupied with reflections on his former fault, and he called aloud several times, "*This hand has offended.*"—Hume's "History of England," Chap. XXXVII

thee; and from him that would borrow of thee, turn not thou away." (ver. 42.)—Where is the Bishop that will undertake to obey these commandments to the letter? Aye, or even in their spirit? or who would propose to enforce them as absolute laws, either of the Church or of the State? Yet, if the 32*nd* verse of this Chapter is to be strictly and literally enforced, why not also the 42*nd*,—spoken apparently at the same time, by the same lips?

There are many other precepts of the Gospel,—precepts uttered by Christ himself, on which we might press similar questions. But for the present, as we have still some further words of Scripture to examine in reference to this question of separation, we shall only say here that the Bishops must show a principle of consistency in this matter; they must deal fairly and impartially with the facts of Scripture; and they must show that they are sincere. We have ventured to offer one explanation of all these passages, one which can be applied to them all with consistency, and without detracting one jot or one tittle from the force of these Christian precepts. We say that they are all to be taken as personal exhortations, addressed to the hearts and consciences of individual Christians; but not to be converted into fixed and absolute laws for controlling the actions of others. If the Bishops are not satisfied with this explanation, let them produce a better one: but let them, at any rate, apply it consistently throughout the pages of the Gospel; and let them show their own sincerity by acting up to it.

CHAPTER X.

It is not at all surprising to find that various questions concerning Marriage, and particularly concerning the principles of the Gospel in relation to it, were raised in the early days of the Christian Church. It is a subject that must always claim prominent attention from every system of Philosophy or of Religion. And knowing what we do of the history of the famous city of Corinth at that period,—one of the chief centres of wealth, art, and luxury in Greece,—it is no more than we might expect that these questions about marriage should have been discussed and debated with much interest in that great Capital, both among the Christians and the unbelievers. Such at any rate appears to have been the case; and the result was that some four or five years after the Apostle Paul had planted the Church in Corinth, and had made a lengthened stay there, of a year and a half, the brethren wrote a letter to him requesting some further instructions and advice on several matters, both of doctrine and practice; and foremost among these, on some points touching the question of Marriage. The Apostle's reply to these enquiries is found in his first Letter addressed to the Church at Corinth; and in the Seventh Chapter of that Epistle, he deals very fully with their questions on the subject of Marriage. There was one vice for which the Corinthians were notorious,—that of prostitution; and this was apparently so prevalent in that luxurious City, that even the Christian converts were not free from it. St. Paul therefore does not fail to speak very plainly about this matter in the earlier Chapters of his Epistle: and in the beginning of this 7th Chapter, (as we have already pointed

out above, Chap. V. § 3,) he tells them what is the natural and proper remedy for this evil; namely, that every man should have his own wife, and every woman her own husband.

I. (1.) Now we must call attention particularly to this point, as being one of essential importance; a truth that is most necessary to be borne in mind in all attempts to deal with these matters; a truth that requires to be boldly and honestly acknowledged, in spite of any prevailing prejudices or prudery; but one which is evidently not generally understood, or not generally acknowledged as it ought to be. The vice here referred to by the Apostle is probably as rampant now in many parts of Christendom as ever it was in Corinth; and the Christian Church appears to be almost utterly powerless to check it. It is clear that but very little progress is made in that direction; indeed very little seems to be even attempted or thought of, beyond preserving some measure of public decency; that is to say, putting down, as far as may be, the open display of prostitution, keeping it out of the public streets. Here also, as in many other cases, we may say the Church is ready enough to call in the aid of the Civil Power, the Police; but appears to be very backward in attacking the evil with her own proper weapons, with the earnest preaching of the Word of God, and the faithful exercise of her own spiritual authority.

(2.) It is not our purpose on the present occasion to enlarge upon the magnitude and the intensity of this great evil, and the mischief produced by it in every way,—moral, social, and physical; temporal and eternal. But looking now rather at the remedy to be applied, what we have to say here is chiefly this:—that if we desire to effect any real and permanent good in the matter, we must not be satisfied with a superficial treatment, such as we have just referred to,

mere measures of police, for hiding it out of sight; but we must endeavour to go to the root of the evil, to see what are the fundamental principles at work in producing it. And in order to do this, we must look at human nature as it is, with all the propensities and instincts which are planted in man by the hand of his Creator; instincts which are so universal throughout the animal world, which are so indispensable for the preservation and continuance of the race; which we cannot believe to be essentially vicious or evil in themselves, but which only become so by perversion and abuse. And we must recognise the unquestionable truth that if these instincts are restrained by artificial barriers, and unduly hindered from their lawful exercise, they will inevitably find vent in other forms that are less lawful, and will, in short, produce just that sort of mischief which we see around us. This is the truth which, as we have repeatedly observed in these pages, is clearly recognised in Scripture: and it is in accordance with this truth that St. Paul says in the chapter before us, "In order to avoid fornication, let every man have his own wife, and let every woman have her own husband. . . . . Every man hath his proper gift of God, one after this manner, and another after that. . . . . But if they cannot contain, let them marry: for it is better to marry than to burn."

(3.) What then is the lesson to be drawn from these facts? Clearly this, that every needless obstacle to lawful marriage should be removed, as far as it is practicable to do so; every needless obstacle, we say, whether it be imposed by the laws of the Church or of the State; or whether it be merely the result of social custom, pride or prejudice. It is clear enough that there are many such obstacles in existence among us, arising from both of these causes; some, from positive laws of the Statute Book; still more, from the unwritten, but more tyrannical laws of Society. As to this latter class, they are indeed so numerous and so complicated

that we shall not attempt to discuss them at length in this place: only we must leave on record one serious protest and warning, which applies to every hindrance that is thrown in the way of a lawful marriage. If it is a needless hindrance: if it is not strictly warranted by the laws of God, the laws of Nature, or by such common prudence and care as are demanded for such a serious undertaking: if, in short,—as we know is very often the case,—if it is due to nothing better than a sentiment of worldly pride and ambition: when a lawful, an honorable, and a loving marriage is thwarted by such considerations as these, then we say that a very heavy responsibility rests upon the heads of those who are guilty of this great cruelty. How many a life's happiness, indeed, is sacrificed in this way! And what is the consequence? In some cases, the blow is borne in patient suffering for many long years: in others, a disposition which might have been amiable is soured, and perhaps driven into vice and despair. And for all the mischief and misery thus produced, who must be chiefly and ultimately answerable? Some degree of blame may perhaps often be due to the individuals themselves who have given way under the pressure of trial and temptation: but a large measure of it, we cannot doubt, must be laid to the account of those who for their own selfish purposes have created the difficulty.

But our business now is of a more practical nature; and we are chiefly desirous in these pages to point out some hindrances thrown in the way of marriage by the laws of the realm, and which therefore we think ought to be reconsidered by the Legislature, and, so far as justice and truth and sound policy may seem to dictate, to be speedily removed. For this purpose, we return to the words of St. Paul in this Epistle to the Corinthians, and especially to the principles which he sets forth in regard to the question of separation and remarriage.

II. St. Paul's directions on the question of separation are contained in the six verses, 10-15, of this chapter.

> 1 *Cor.* vii. 10. "Unto the married I command, yet not I, but the Lord, Let not the wife depart from her husband:
>
> 11. But and if she depart, let her remain unmarried; or, be reconciled to her husband. And let not the husband put away his wife.
>
> 12. But to the rest speak I, not the Lord. If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away:
>
> 13. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him.
>
> 14. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband. Else were your children unclean; but now are they holy.
>
> 15. But if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases. But God hath called us to peace."

Now there are several distinctions very observable in the various directions which St. Paul gives in this chapter. First, there are some things which he speaks by commandment, by direct authority from the Lord, as in this tenth verse; and others which he delivers simply on his own personal advice and recommendation, and as to which he says distinctly that he has no special revelation. Again, there are some rules which he lays down as matters of general and universal application, as containing essential principles of the state of marriage: others are words of advice, merely of a temporary character, adapted to the state of the Church at that particular moment, and the persecutions and distresses which it was then suffering. "I suppose," he says, "that this is good for the present distress," namely, that a man who is unmarried should remain so: but it would evidently be a great mistake to extend this advice into a general principle, for all men, or all Christians, and at all times; or to take it, as some Churches did afterwards, as a

general prohibition of second marriage. And once more, there are some directions which apply to the case where both husband and wife are believers, members of the Christian community, as appears in *ver.* 10, 11: others, as in the verses immediately following, which distinctly refer to cases of mixed marriage, where a Christian husband or wife is married to a partner who is an unbeliever. (1.) First then, with regard to the question of separation, he says,—and he delivers this as a divine commandment; either, that is to say, as a truth revealed to himself, or perhaps as being the principle of the law delivered by God to Moses,—"Let not the wife depart from her husband." This is clearly quite in agreement with all the principles of the Older Dispensation; in which there is no law, no expression of any kind, which would authorise a wife to forsake her husband, nor any example recorded of such a thing being done. This no doubt is the general law of marriage: and as a *general rule*, it is obviously one that is very necessary to be observed. It is necessary for the husband's sake, that he should not be left alone, with the cares and concerns of the family on his hands, for any trifling reason, at the caprice of his wife. And it is still more necessary for her own sake, that she should not leave her own husband to seek another, whereby she would become guilty of the sin of adultery.

But although this is very clearly and very properly given as the general law, yet we must ask on the other hand, is it given as a law of absolute stringency, one which admits of no exception, no violation, under any circumstances whatever? Must the wife, for instance, submit to every degree of cruelty and violence from a brutal husband, without any power of escape, so long as he lives? And are these the terms which an Apostle of Christ insists upon, as essential principles of Christian Marriage,—conditions which cannot be violated, except at the peril of committing a deadly sin against God?—Not quite so, indeed. "But,—he goes on

to say,—but and if she depart, let her remain unmarried; or, be reconciled to her husband."

In these words, then, it is clear that he does admit the possibility of some exceptions to that very general rule: there are some circumstances under which a wife may be justified in departing from her husband, and may do so without incurring any spiritual censure on that account; she may still be numbered among the members of the Christian Church. This is an important point to begin with; it saves the Gospel of Christ from a very serious objection to which it would otherwise be exposed,—namely, that of being too unpractical, too far removed from the present imperfect state of human nature.

But although the Apostle makes this very necessary allowance to the wife, of separation under certain special circumstances, he clearly does not contemplate a total divorce: "if she depart, he says, let her remain unmarried, or, be reconciled to her husband." In many cases, no doubt, the measure of relief here given, the permission to escape from the immediate control of a cruel and tyrannical husband, is all that is desired: and we know also that a short period of separation often gives to both parties an opportunity for calm reflection, and ultimately leads to that result which is the most desirable of all, a sincere reconciliation.

III. Nevertheless, it may be thought that even this permission is not quite sufficiently comprehensive, that it does not meet every case; and is therefore not such a perfect law as we might expect to find in a perfect Religion,—a Religion which professes to come from the Great Creator and Father of all. There are some cases where the husband's character is so depraved, so insensible to any good influence, so utterly hopeless of amendment, that the wife cannot possibly look forward to any return to cohabitation with

him. And yet, to condemn her to perpetual widowhood, if there is no serious fault on her own side, would manifestly not be just, but might even expose her to great personal hardship and temptation. This then is a case which we cannot but think *ought* to be contemplated, and ought to be provided for by the Gospel, if the Gospel itself is perfect. A further examination of this passage, bearing in mind that very important principle which we have before adverted to, namely, of looking at the *whole* teaching of the Gospel, and the whole system of the Church's discipline in reference to the matter,—this, we venture to say, will give us a reasonable solution of the difficulty before us.

It is to be remembered then, as we have said above, that in these various directions, the Apostle makes a distinction between the rules which are to bind Christians together in marriage, and those which are to be applied to a mixed marriage, between a Christian and an unbeliever. As for the marriage of those who are altogether outside the pale of the Church, where both husband and wife are heathens, it is hardly necessary to say that St. Paul does not meddle with their affairs at all ; his rules have no application to them, so long as they remain unbelievers. But when one or both of the parties are Christians, and amenable to the laws and discipline of the Christian Church, and when the Church herself is faithful in the exercise of this discipline,—reasonably and sincerely faithful in fulfilling this very important part of her duty, to the best of her ability,—then we may apply the Apostle's instructions to the case, and with a reasonable hope of finding them generally suitable and sufficient.

Here then we observe that the case dealt with in this 11th verse is that where both husband and wife are recognised members of the Church, and such members only as an Apostle could recognise, enjoying all its privileges, admitted to partake of the Body and Blood of Christ, in his own appointed ordinance. Now if a Christian husband should

be guilty of such conduct as that we are now considering,—not only a disregard of the great duty of love towards his wife, but such cruelty and depravity as to make her life unbearable,—and if this were to be long continued, without any sincere effort or hope of amendment, then it is quite certain that the Church, in the performance of her own imperative duty, after all reasonable warning and remonstrances, would at length cut off such a member from her body; that either he must himself depart, or else be cast out from her communion. It so happens that in this selfsame Epistle, we find St. Paul expressly commanding the Corinthian Church to exercise this authority with regard to a member of their body, who had committed a grievous crime; (1 *Cor.* v. 1-5): and it is clear that his specific directions on any matter of discipline, such as this one before us, cannot be properly read and interpreted on any other basis than this, namely, that the fundamental principles of Church Discipline are to be duly and efficiently carried out. If then this discipline were duly enforced against the offending husband, the case would then at once be brought under the rule which relates to mixed marriages; and this rule, as we shall presently see, practically delivers the Christian brother or sister from his bondage, "in such cases."

IV. (1.) But the Apostle says also on the other side, Let not the husband put away his wife. And this again is very important, no doubt, as a general rule. In some respects, inasmuch as the social position of the woman is much less independent than that of the man, the hardship and injustice inflicted upon the wife by a wrongful dismissal would be much greater than in the other case; and this is a matter in which she requires not only the support of the Church on moral and spiritual grounds, but the protection of the Civil Power as well. It is evidently quite right that a husband should be generally bound to provide his wife

with a suitable maintenance, even if he has good reasons for refusing to live with her, or to keep her under his own roof: excepting, that is to say, when there are causes of so grave a nature as to set him free from this responsibility altogether. And the question that we now have to consider is this, what causes, if any, may be deemed sufficient to set him free in this respect; to justify him, either in putting away his wife, out of his house, in the partial separation, *a mensâ et thoro;* or in the total divorce and dissolution of marriage?

(2.) It will be observed that in this brief clause relating to the husband, St. Paul does not express or intimate any exception to the general law, as he had done in reference to the wife. But it will be seen at once that this omission must not lead us to the conclusion that he intends thereby to exclude all exceptions whatever. Christ himself, as we have seen, distinctly specified one exception to the law,—"except it be for the cause of fornication." And as St. Paul appears to admit that there may sometimes be sufficient grounds to justify the wife in departing from her husband, still more, we must suppose, he would admit the same liberty of separation on the husband's side, when matters were sufficiently urgent to require it. And in seeking to determine this question, the same consideration which we have applied in the former case must evidently be borne in mind here also: the rule here given by the Apostle refers only to the case where both parties are members of the Christian Church. Now it is clear enough that the wife may be guilty of serious misconduct as well as the husband; and misconduct of such a character, that although not amounting to the definite crime of adultery, the husband can no longer be justly compelled to submit to it, or to tolerate her presence in his own house: and such also as must entirely shut her out from the privileges of Christian communion and fellowship. It is hardly necessary to name in detail such grounds of complaint as we refer to: she may

be intemperate, a confirmed drunkard, and thus not only neglect her own domestic duties, but destroy the whole moral character and reputation of the family: she may be extravagant, or dishonest, and ruin her husband in his purse and his credit: she may give way to violent temper and passion, and endanger the lives of all who live with her: she may be a liar, a blasphemer, an idolater. Is a Christian husband, and one who desires to bring up his family in the fear of God, to endure all these things without remedy? Has the Church nothing to say to him but that he must bear it as well as he can, bear it as an appointed and inevitable trial, as one for which she can give no practical relief? Is this really true, and in accordance with Scripture itself? Certainly not, we say. The Church herself has clearly a duty to perform in this matter. The wife who is guilty of these and similar offences, and who persistently refuses to amend her conduct, must also be amenable to the Church's discipline; and in due course, must be cut off from that communion, that Christian name, in which she can have no real share, which is merely an empty profession with her: she must lose all her Christian privileges; and among others, the claims of Christian wedlock: her husband, as a Christian brother, must be no longer held in bondage, "in such cases."

(3.) Thus again we find that by carrying out the true principles of Scripture in their entirety, in doctrine and in discipline, we arrive at a result which is consistent with true Christianity on the one hand, and which reasonably meets the practical difficulties and necessities of the case on the other. And we must say again very emphatically that if we are to take the Scriptures at all as a guide in these matters, it is clearly due to them that we should look at them as a whole, impartially and comprehensively; and especially that we should not mutilate their teaching out of deference to any popular traditions or prejudices of the day.

However, there are still some difficulties and objections which may probably be raised against the method of treatment here proposed. How is this Church Discipline to be carried out in the present day?—Church Discipline!—many will exclaim,—What is it? We never heard of such a thing: there is no such thing in the Church of England.—And again; even if this were effectual within the borders of the Church Establishment, how would the question of Marriage generally, amongst the public at large, be affected by it? These are questions which with some other points we shall endeavour to deal with immediately: but before passing on to them, we have yet some further directions of St. Paul's in this Chapter remaining to be considered.

CHAPTER XI.

I. The Apostle proceeds, in the 12th verse, to deal with the case of a mixed marriage.

(1.) "If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away." In those days when the Gospel was new to the world in general, and new to the people of any particular country, in that place the distinction between Christians and unbelievers would no doubt be much more strongly marked than it is among ourselves at the present day: and it would often happen that either a husband or a wife, or some individual member of a family, would be led by their personal convictions to join the Christian brotherhood, while the rest of the family still remained unconverted. It is not unlikely also that the example of those Jews under Ezra, to which we have referred, may have raised the question whether a similar principle was to be adopted with regard to Christians; whether it was necessary that a marriage between a Christian and an unbeliever should be dissolved on similar grounds. St. Paul, it will be observed, makes no other distinction here than between a Christian and "an unbeliever"; whether this latter were a Jew or a Gentile, whether an idolater or not, was a point that did not affect his decision, as a *matter of principle;* although *in practice*, no doubt, it would often be a matter of great importance: as he more clearly urges upon the Corinthians in his Second Epistle—"Be ye not unequally yoked together with unbelievers,—(referring probably not to marriage only, but to the general affairs of life:) —for what fellowship hath righteousness with unrighteousness, or what communion hath light with darkness?" (2 *Cor.* vi. 14.)

(2.) In the case before him, then, St. Paul has no hesitation in giving his judgment, though it is, as he tells us, simply his own judgment on the question, and is not prompted by any direct revelation from the Lord. If a Christian husband or wife has a partner who is an unbeliever, there is no necessity for them to separate on this account; the marriage is not invalidated by this circumstance; and there is no positive law against it. These words of the Apostle, then, declare a great and important principle of religious liberty and toleration, namely, that mere differences of religious faith ought not to be made a barrier, by any force of law, to the union of two persons in marriage. It is a declaration which, no doubt, will give comfort to great numbers of people; because we know that strong personal affection, and love, even of the most unblameable kind, will sometimes spring up between those who happen to be divided in matters of religion; who have been born and educated, perhaps, in different lands, or have adopted different opinions on this important question. This is a principle, which, unhappily, like so many other truths of Scripture, especially on the subject of marriage, has been too much ignored and set aside by the Church during many ages: even at this moment, while we write, (1884,) a great political controversy is raging on this very point in the kingdom of Hungary; where the law forbids any marriage to be celebrated between Christians and Jews; and where, in spite of the earnest endeavours of the Government, the influence of the Roman Catholic Hierarchy has hitherto succeeded in maintaining this unchristian and unscriptural prohibition. But here, as in other matters which we have already pointed out, the Ministers of the Gospel have clearly mistaken the true force which belongs to the words of Scripture; they have erected into a fixed law what ought to be received as no more than a word of exhortation or advice. If they thought proper simply to exhort the

members of their own flocks, as a matter of prudence, to abstain from marriage with unbelievers, without pressing the point too urgently as a matter of duty, there would be no great reason perhaps to complain of their proceedings: but it becomes a very different thing when they use all their influence and authority to enact and perpetuate this restriction as a positive law of the State.

(3.) St. Paul adds a reason for the judgment which he has just expressed: "for the unbelieving husband is sanctified by the wife; and the unbelieving wife is sanctified by the husband." The effect of these words has been somewhat diversely understood by different Commentators. Some have supposed that he here refers to the good moral influence exerted by the Christian upon his unbelieving partner: and in those days of real faith, when men did not generally call themselves Christians unless they were in earnest, and really believed in the great principles of the Gospel, this influence would no doubt be very strongly felt, and would be one of the great instruments by which the Christian Faith would make its way in the world. At the same time we must say that the words of the Apostle probably go deeper than this merely superficial meaning. His word "sanctified" refers to nothing less than the vital power of the Holy Ghost, dwelling in a true believer, and making him essentially holy both in body and soul; holy, not only because his sins are forgiven; but holy, because he has also a new life planted within him, a veritable inspiration from the Lord God himself: and genuine holiness of this type is conveyed, in some degree perhaps to all those with whom he comes into near contact upon earth; but especially to that one who is made one flesh with him in the close bond of marriage.

II. The Apostle's precept in this place is based upon one very natural and very necessary supposition. "If any

brother hath a wife that believeth not, and *if she be pleased to dwell with him*, let him not put her away." It is only when there is this free consent and willingness to live together, that he enjoins the Christian not to leave his unbelieving consort. But very often, as we know too well, this willingness is altogether absent. The Christian indeed, as we have seen, is bound by his Christian principles not to forsake his partner, unless under some very serious provocation or necessity: but the non-Christian will not feel himself constrained by the same considerations; and so it will happen that either for some slight provocation, or even for no good reason at all, the unbeliever departs,—deserts his Christian consort. And this is the important question we have now to consider: What obligation does the Gospel of Christ impose upon the deserted husband or wife in such a case?

This is a question which claims serious attention; not only because it is of great practical importance in itself; but also because it seems clear that the English Law on the subject is now not in conformity with the precepts of Scripture: and further, that some of the popular notions by which this law is supported are to a great extent fallacious,—are not founded on true justice, wisdom, or morality.

(1.) First then, as to the actual precepts of Scripture, as contained in these words of St. Paul,—the only place where this particular point is treated of.

"But if the unbelieving depart, let him depart." Let him depart. It is to be presumed that everything which could have been done in the way of forbearance and persuasion has been done, and has failed; and that the unbeliever has finally resolved to separate. Henceforth, the responsibility of the step, and of all its consequences, must rest on his shoulders. "You have done *your* duty, St. Paul in effect says to the Christian, and you may now rest satisfied and at ease in your own mind: let him depart, and go his

own way." But more than this: he adds, "A brother or a sister is not under bondage in such cases." Now what is the meaning of this phrase, "not under bondage"? Does it set the believer free to marry again? This is evidently a most weighty question; in fact, the most critical question on the whole matter.

He is not under bondage,—οὐ δεδούλωται,—in such cases. But what other bondage is there in the case, except that of being bound in marriage to a faithless or a truant partner? And what other deliverance can be given, except the release from this bond? Or how can it be truly said that he is not held in bondage, otherwise than by declaring this tie to be dissolved? If we are to give any meaning at all to the Apostle's words,—and this is the precise point we are now dealing with, the just interpretation of those words,—we must say that we cannot see how any other construction can be put upon them than this, namely, that when the unbelieving husband or wife has deserted his Christian partner, and when the desertion has gone so far as to be an established fact, the Christian may then with a clear conscience let him go, give him up altogether; and may also be held free from the bond of marriage, free to marry again. This no doubt is a serious result to arrive at; and we should hardly venture to urge it on our own judgment alone, however clearly it might seem to be warranted by the words of Scripture, unless we had some good authorities to support us in this view of the matter. We have great satisfaction, therefore, in producing the following commentary on St. Paul s words, from the writings of one who was certainly one of the most learned and conscientious Divines of the present age, and lately held a position of the highest authority amongst us: and we have the more satisfaction in quoting this passage from Bishop Wordsworth, because in the earlier pages of this work, we have been compelled, notwithstanding our sincere personal regard for his character,

to challenge his conclusions somewhat seriously on other points. This matter before us is so important that we give the full text of the Bishop's note upon the passage.* (1 Cor. vii. 15.)

"χωρίζεται, *depart*, namely, is guilty of *desertion*. οὐ δεδούλ. ὁ ἀδελφός. *The Christian hath not been made a slave* by his Christianity *in these respects*. Observe the article. St. Paul is careful to maintain the true dignity, and genuine liberty, and spiritual royalty of the Christian character.

"Although *a Christian may not put away his wife*, being an unbeliever, yet if the wife *desert* her husband, (χωρίζεται,) he may contract a second marriage.

"Hence even Romish Divines declare that in this case, marriage is not indissoluble. Thus *A Lapide* says here, 'Nota Apostolum permittere hoc casu non tantùm *thori* divortium, sed etiam *matrimonii*, ita ut possit conjux fidelis aliud matrimonium inire. Alioqui enim servituti subjectus esset frater aut soror, id est, Christianus aut Christiana. Magna enim servitus est teneri matrimonio, et obstrictum esse infideli, ut alteri nubere non possis, sed etiamsi discedat infidelis, continere debeas, et vivere cœlebs.' And in support of this opinion, he refers to S. Augustine, de Adulterinis Conjugiis, c. 13, and c. 19: S. Thomas; and S. Ambrosiaster, who says, 'Non debetur ei reverentia conjugii, qui horret Auctorem conjugii, sed potest alteri se jungere.' And so the Canon Law, cap. 'Quanto,' et 'Gaudemus,' in Tit. 'De Divortiis,' Decretal. Greg. IX. lib. iv. tit. xix. capp. 7 et 8; and in the Decreti Secunda Pars, causa 28, quæstio 2, 'Si infidelis,' Vol. i. p. 946, and Vol. ii. p. 695. Ed. Lips. 1829: where will be found some valuable materials on a question necessary to be considered in the Colonial Dioceses of Great Britain, viz. What rule is to be followed with regard to Heathen Polygamists, after their conversion? See *Colonial Church Chronicle*, June, 1865."

So also Dr. Burton says in his note on this place:

"In this case the marriage vow is not binding. The believing party is not bound to continue with the unbelieving husband or wife, who is determined to separate." †

* "The Greek Testament, with Notes," etc.; By Christopher Wordsworth, D.D., Bishop of Lincoln.

† "The Greek Testament, with English Notes." By the (late) Rev.

These high authorities, concurring with the plain sense of the Apostle's own words, are sufficient then, we venture to say, to claim the serious attention of all those persons who are responsible for maintaining the present state of the English Law on this subject; sufficient to support us in the view for which we now contend; namely, that in the case of actual and confirmed desertion, either on the part of a husband or a wife, where no adequate reason can be assigned for separation, the innocent party ought to be held free from the marriage bond; so far free, at least, as to be allowed to contract a second marriage. We say that this is the verdict of Scripture, and that, as such, it ought to be supported by all those who profess to take the principles of Scripture as their guide in determining the laws of Marriage. And, inasmuch as our present laws on this subject, as we have before observed, have generally been derived from the older Canon Laws of the Church, and have been chiefly supported by the authorities of the Church in their several generations, therefore we appeal most especially to the Bishops themselves to deal with this question, in that double capacity in which they hold a place as Spiritual Peers of the Realm. The Bishops sit in the House of Lords, if for any purpose at all, clearly for this: that they may declare the true principles of Christianity, the accepted Religion of the State, on any matter affecting the laws and institutions of the realm; and that they may also support these principles not merely by teaching but by action; not only by their voice, but by their vote. Whenever this question, therefore, is next raised in Parliament,—as we hope it soon will be,—will the Bishops boldly and faithfully come forward to declare their sentiments on this point, even in the face of any popular notions or any Ecclesiastical

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Edward Burton, D.D., Canon of Christ Church, and Regius Professor of Divinity. Oxford, 1835.

traditions, which may exist on the other side? Will they generally support the opinions we have quoted from the learned Bishop of Lincoln and other authorities,—opinions which in this case are clearly quite unbiassed and impartial, and would never have been expressed by these eminent writers unless under a clear conviction of their truth?— If the Bishops, we say, will publicly acknowledge the justice of these conclusions, then we can have little doubt but that they will at once carry the voice of the Legislature and of the Country with them; and will deliver many innocent men and women, who are now suffering great hardship, from their bondage.

III. (1.) But now as to the important question of Church Membership and Church Discipline, which we believe is the true key to unlock the difficulties of this problem. St. Paul, as we have seen, specially refers to this point in dealing with the question of separation; he applies a different rule when the question is between two members of the Church, and when it is between a Christian and an unbeliever: and the reasons for this difference, as will be seen from what we have already said, are not merely of a formal or technical character, but are in truth very real and substantial. So long as the husband and wife are both recognised members of the Church, there is some guarantee for their good conduct; that it will be, if not always absolutely unblameable, yet at least free from any very grave offence or impropriety; and therefore that there can hardly be any cause of complaint between them sufficient to require a severance of the nuptial tie. But when one of them is outside the pale of the Church, there is no such guarantee for his conduct: he, (or she,) may be guilty of any or all of those very serious offences which we have referred to; and which may inflict such hardships on his Christian partner as are not reasonably bearable; which therefore, in all justice, entitle her to

deliverance,—even, if need be, to absolute freedom from the bond of Marriage.

Now this is all plain enough as a matter of principle: but at the present time, there is unfortunately a practical difficulty in the way of putting these principles into execution. And the root of the difficulty is simply this, that here, in England at least, the distinction between Christians and unbelievers is not so clearly and definitely marked as it was in the days of the Apostles. In dealing with this point, however, we must make a distinction between the case of the Church of England, and other Christian communities outside the Establishment. For the present, we speak only of the Established, Episcopal, Church: we shall consider the position of Nonconformists in relation to the question subsequently.

(2.) *Primâ facie*, then, it would appear, no doubt, that this fifteenth verse does not apply to a case where the deserting husband or wife is still a member of the Church. But the important question is this: Is he rightfully entitled to be counted as a member, and to claim all the privileges of membership? If he has done nothing to forfeit them, well and good: then we acknowledge his position, and we do not class him with the unbelieving. But if it is otherwise: if he has been guilty of any of those serious offences of which we have spoken; or if he has deserted his Christian wife without any sufficient reason, this of itself is clearly a grave offence against Christian duty; and if it is persisted in, it ought to bring him under spiritual censure, and in fact to suspend or cut off his communion. This is what *ought* to happen, and what *would* happen in any Church that was rightly governed, and was careful to carry out the true principles of Apostolic Doctrine and Discipline: and the result would be to give to the aggrieved party all the relief which could be reasonably required.

But practically, it will be said by many people that such

theories as these are visionary and out of place in the present day: that, in fact, there is no such thing as Church Discipline now in the Church of England. This indeed is only too true; and a most serious, a most startling truth it is. A man who has gone through the form of Baptism in his infancy, may grow up in utter neglect of all religion and all morality; he may become a thief, a liar, a drunkard, a blasphemer, and yet remain member of the Church; and if he chooses, he may enjoy all the highest Christian privileges. If he chooses to go into any Church and walk up to the Lord's Table with the rest of the Communicants, nobody will say a word to stop him: if he presents himself to be married, the Clergyman will receive him without question, and give him the Church's blessing,—or at least pronounce the appointed words over him. He may illtreat his wife to any extent, beat her and kick her to within an inch of her life, and the Church will not rebuke him: and if at length he escapes the gallows, she will commit his body to the ground with all the same professions of a "sure and certain hope of resurrection to eternal life," the same "hearty thanks" to Almighty God, the same outward honors and respect, in short, that she would pay to the most exemplary member of her Communion.

All this is notoriously true: it has been acknowledged, lamented, protested against as a great scandal, by individual members of the Church very many times, especially during the last forty years. It is indeed a monstrous and most mischievous scandal; most mischievous and damaging to the character of the Church herself, and to that Gospel which she is commissioned to preach; most prolific also of practical injustice and injury to her own members in various ways; and amongst other things, in this matter with which we are now concerned.

(3.) And it is very necessary to ask, Whose fault is it? Who is chiefly responsible for this state of things? It is

not the fault of the Church herself, that is to say, of the laws and principles of the Church of England. She, the Reformed and Catholic Branch of Christ's Church established in this Country, she has declared the necessity of this Discipline plainly enough in her Homilies, her Canons, and her Rubrics; in which also she has made ample provision for its due exercise and administration. The fault is not in the Church herself as a Spiritual, Corporate, Body. The fault is,—some say, it is in Parliament: some say it rests with our forefathers, the generations of the last century, who suffered this discipline to lapse into its present state of abeyance: some say it is in the circumstances of the day, the spirit of the age. But no: the fault is not in *things*: the fault is never in *things*, in circumstances: the fault is in *men;* and the fault of anything that is done wrong *now*, or that is left undone, must be in *living men*, in the men of this present age and generation. Our fathers of the past must answer for their own faults, their own omissions: *we* must answer for *ours*. The fault of this great scandal may be spread over the heads of many hundreds and thousands of individuals amongst us, whose duty it is to see to this matter: but above all, surely it must lie upon the heads of the Rulers of the Church; of those Chief Ministers to whom the spiritual government of the Church has been committed. They are,—as St. Paul teaches us again in this very instructive Epistle,—they are the Ministers of Christ, and stewards of the mysteries of God. "Moreover,—he adds,—it is required in stewards that a man be found faithful." (1 Cor. iv. 1, 2.) It is a difficult post, no doubt, that they occupy; and this matter of Discipline is not the least of the many difficulties besetting it. But, as we have said before, —and we cannot help repeating it again very emphatically, —they hold their high position with all its advantages and emoluments; and they hold it also with all its difficulties and responsibilities.

There is now indeed, as we are glad to hear, another effort about to be made, and by the Bishops themselves, to remedy the great evil of which we have here spoken. But, to say the truth, we fear some very great changes will be necessary before any effectual result is obtained: some changes of a much more serious and radical nature than our present race of prelates will be disposed to contemplate.

(4.) In the meantime, if they cannot at once give full effect to these principles of Apostolic Discipline, there is no reason why justice should be entirely withheld from the Christian community in this matter. The Apostle says, "A brother or a sister is not to be held under bondage *in such cases*": in such cases: the words are indeed sufficiently wide to include all cases where the demands of justice or of necessity require relief. If the Bishops can do nothing else immediately in the matter, they can at least give their assistance and their counsel in revising the present law of Divorce in favour of true Christian liberty; which is also, as we are further prepared to urge, in favour of true morality. If they choose to move in this direction, the Legislature will certainly not refuse to follow them. But if they refuse to do so, then it will appear that a double responsibility rests upon their heads: that while they are so grievously wanting in their duty as respects the discipline of the Church, they are at the same time, more than any other men in the kingdom, responsible for the suffering, the evils, and the bondage which now exists: and that they—aye even they who love the chief seats in the synagogues, and to be called of men, Rabbi, Rabbi,—that *they* bind heavy burdens and grievous to be borne, and lay them on men's shoulders: but they themselves will not move them with one of their fingers.

CHAPTER XII.

HAVING now viewed this question of separation by the light which the Scriptures throw upon it, it is time that we should come to look at it in that aspect which many persons will think to be more practical and more important, as a question of moral and social expediency. And the questions that here chiefly present themselves for solution are these: Is any considerable relaxation of the marriage bond required as a matter of justice between the parties themselves, or of urgent necessity for the welfare of their children? And what effect would it have on the general welfare of the community? Would it be conducive to the maintenance of public morality and happiness; or would it prove mischievous and destructive to these great interests?

I. Now the general sentiment appears to be that although some hardship is produced in some individual cases by the present state of the law, yet that on the whole, it works well for the moral and social wellbeing of the community. This sentiment is so well and fully expressed by the late Mr. Justice Coleridge, in his edition of Blackstone's Commentaries, that we cannot do better than give his own words upon the subject.

Writing on the Law of Divorce, Blackstone says, in a passage that we have before referred to,

> "Divorce *a mensâ et thoro* is when the marriage is just and lawful *ab initio*, and therefore the law is tender of dissolving it: but for some supervenient cause, it becomes improper or impossible for the parties to live together; as in the case of intolerable illtemper, or adultery in either of the parties." (Book I. Chap. 15.)

Upon this Sir John Coleridge observes in his note,*

> "It may be doubted whether illtemper alone is a ground for a divorce *a mensâ et thoro;* the policy of the law is to consider marriage indissoluble, and the Court is slow to interfere, except where something appears which renders cohabitation unsafe, or is likely to be attended with injury to the person or to the health of the party applying. It is no less truly than beautifully said by Sir W. Scott, in the case of *Evans* v. *Evans*, that 'though in particular cases the repugnance of the law to dissolve the obligations of matrimonial cohabitation may operate with great severity upon individuals; yet it must be carefully remembered that the general happiness of the married life is secured by its indissolubility.' When people understand that they *must* live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off: they become good husbands and good wives from the necessity of remaining husbands and wives: for necessity is a powerful master in teaching the duties which it imposes. If it were once understood that upon mutual disgust, married persons might be legally separated, many couples who now pass through the world with mutual comfort, with attention to their common offspring, and to the moral order of civil society, might have been at this moment living in a state of mutual unkindness, in a state of estrangement from their common offspring: and in a state of the most licentious and unreserved immorality. In this case, as in many other cases, the happiness of some individuals must be sacrificed to the greater and more general good."

This passage appears to embody all the principal arguments that can be urged on this side of the question, from a secular point of view, independently of the religious principles involved. And we desire in the first place freely to acknowledge that there is a great deal of truth and force in the considerations here advanced; especially in the words quoted from Sir William Scott. The fact is, nobody can expect to have everything just as he wishes in this world; and it is only a most obvious truism that we must be pre-

* Blackstone's "Commentaries": Edited with Notes, by John Taylor Coleridge, Esq. 1825.

pared to use forbearance, and to make concessions, even perhaps every day of our lives, if we desire to live in harmony with those around us. And not only this, but we may say that such forbearance seldom fails of producing some good effect; even though its effect is not always so immediately visible as we might desire, yet very often it will be remembered afterwards, and with gratitude, and will conduce to the best and truest reconciliation. But yet, at the same time, it must be confessed that these arguments are true and sound within certain limits only; it is possible to push them too far; and they are not altogether free from considerable fallacies. Now however that the principle of divorce has been admitted to an extent which was not known when those words were written, the question for us is in the first place rather one of degree: What limits of endurance are to be prescribed to an aggrieved husband or wife? Where may this compulsory cohabitation justly be terminated?

II. Now, the first and fundamental idea contained in this argument, and that which appears to be chiefly present to the minds of those persons who uphold it, is this: that, "When people understand that they *must* live together, they learn to soften by mutual accommodation the yoke which they cannot shake off." True, we say: we may admit that this is so in many cases; that people do sometimes learn to exercise patience and forbearance from the necessity of the situation in which they are placed; and that it is better that this great lesson should be learnt even under the pressure of circumstances than not at all. But on the other hand, there is much reason to fear that in many cases, these lessons of true forbearance are not learnt under the circumstances supposed; but that something else is learnt and practised in place thereof,—something else which is of a very different moral value. In many cases, as it cannot be denied, husbands and wives, who are no longer bound together by any

ties of affection, and who are not endowed with any high degree of true patience, or true Christian character, come to tolerate each other with little better than sullen silence and indifference; and very often, with not even that: they suffer violent outbreaks of illtemper to recur day by day, with no further efforts to avoid them, than barely to keep them within the precincts of their own homes, to hide them from the sight and the hearing of their neighbours. Hypocrisy, deceit, and doubt, take the place of faithfulness and confidence: and in short, all the mischief and the misery of prolonged bitterness is there; but it is cloaked over by some regard for public decency, or rather by the fear of public exposure. And unhappily, there is a great deal too much of this "public decency" abroad in the world; it is too much encouraged and accepted as a substitute for genuine honor and honesty. We protest against it most unequivocally.

Then again, this fact of compulsory cohabitation, like many other facts, is a weapon that cuts both ways. It may induce some people to exercise forbearance, as here supposed: but in many other cases, probably, it encourages that party which is chiefly in fault, to take advantage of the situation. Many a husband, perhaps, would be more careful to curb his temper, if he knew that his wife had greater freedom to escape from him: and still more, probably, would many a wife show more respect for her husband's authority, if she knew that she could be more easily dismissed.

However, this branch of our subject is, no doubt, rather delicate and difficult to deal with: it is not one on which we can substantiate our opinions very much by proofs or reasoning: if people do not see the force of these considerations by their own common sense and experience, we cannot expect to convince them by arguments. But at least it must be admitted that the desired result of mutual forbearance very often fails to be produced as a consequence of

forced cohabitation; and especially that most desirable result of genuine and sincere reconciliation: it is too often supplanted by the vain pretences of outward civility, and superficial decorum or propriety.

III. These remarks apply chiefly to cases of illtemper, and such mutual offences as are not of the most serious type; where no doubt there is often much fault on both sides; and where, for obvious reasons, such as some of those assigned in the above quotation, it is not desirable to allow the bond of marriage to be too easily dissolved. But there are other cases of a more serious character than this; cases, such as those we have briefly referred to above. (Chapter X.); and others also, in which a positive sense of duty will seem to require separation. And here it is chiefly that we are compelled to differ from those high authorities that we have just quoted. For instance, there are cases of incurable depravity and cruelty on the part of a husband, where no "mutual accommodation," or forbearance by the wife will obtain for her any effectual relief. Is it then necessary for the sake of public morality and expediency that the whole comfort and happiness of her life should be utterly sacrificed? And is this sacrifice, this ruthless sacrifice, demanded in the name of modern civilization and enlightenment? If so, it would appear that our boasted liberty and civilization are more rigid, more severe, than Christianity itself. Surely, no man now-a-days, and especially no man who is at all acquainted with the principles and objects of modern legislation, will be satisfied to dismiss this question by saying that, "the happiness of some individuals must be sacrificed,—to such an extent as this,—for the sake of the greater and more general good."

IV. And so also on the other side. The husband, as we have said before, may have grounds of complaint quite as

serious as the wife, and quite as clearly entitling him to relief. And sometimes it is not merely a question of what he may be able or disposed to endure, as a matter of patience, but what he ought to tolerate, as a matter of duty to his family. For instance, to take one very common case: there is no duty of more imperative obligation on a father than the training and education of his children, especially the education and formation of their moral character. And in this difficult and delicate business, as perhaps all children, with hardly any exception, have some tendency to do wrong, a little firmness, and even judicious correction, is often very necessary in their early years, and is likely to obviate much greater difficulties afterwards. But how often does the foolish weakness and partiality of a mother interfere with this process, either by open resistance, or by secret petting and indulgence! How many a man's character has been absolutely spoilt, vitiated from his boyhood, by this folly,—folly or something worse! folly, if it is due merely to weakness, fondness, or partiality; but something much worse, if it is due to selfwill and impatience of control. And we must ask here most seriously and earnestly, What is a father to do in such cases as these? What *ought* he to do? If he has a high sense of the duty imposed upon him,—and he cannot think too highly of it;—if he sees the urgent necessity of this correction, a necessity growing more urgent day by day; and if he is continually and wilfully thwarted herein, without just cause, by the mother of his children, what is he to do?—We know that many a man in such circumstances, not without a long struggle perhaps, at length gives up the conflict, and lets the mother have her own way, *for the sake of peace.* Continual domestic warfare of this kind is not tolerable for those who have been brought up in an atmosphere of civilization, who have learnt the elementary principles of refinement, and have a due regard for the feelings of others: and so, for the sake of something like

peace and quietness, they reluctantly abandon a great part of what they believe to be their duty, their prime duty to their children. And in the present state of affairs,—when the husband has practically no means of enforcing his own authority at home, where his wife chooses to resist it, if he is not disposed to resort to open violence and despotism,—in the present state of affairs, we say, there is apparently no help for him: it is a great moral evil without any available remedy. And not only in regard to this particular matter of duty towards his children,—though this is certainly the most urgent of all,—but in regard to the government of his household generally, if the wife is determined to "have her own way," and to have it, not by persuasion, not by showing, what is no doubt very often true, that her own judgment is the best; but to have it simply as a matter of temper and wilfulness: if she altogether repudiates the duty of submission, and sets her husband at defiance, again we ask, What is he to do? Is he to submit to this also, as a contribution to the "general happiness of married life," and the benefit of other people?

There is indeed, in the present day, a disposition in some quarters to elevate the position of women, not only in the way of education and political privileges, but even to put the wife on a level with her husband, and to ignore the old-fashioned principles of marital authority. Such a movement, we venture to predict, can never permanently succeed. It is against nature, against universal history, against the true wellbeing and happiness of married life. As for domestic tyranny and despotism, this of course is not the point in question; this is not what we are contending for: nor again do we grudge the power which a good and loving wife can obtain by her own legitimate influence: all this let her enjoy by all means. But at the same time we do say that it is obviously necessary that one point should be clearly settled in every household: Who is the head of the family?

Who is the master of the house? And it is most desirable that this point should be settled as a general and universal principle, so that there may be no question, no controversy, no fighting about it. This dominion has in all ages and all nations been given to the man, and not to the woman; and it is not likely that the world will turn itself upside down on the question at present, or that any such revolution can yet be considered at all "within measurable distance."

It is hardly necessary to say that as long as the principles of the Bible have any substantial influence among us, such a thing cannot be thought of. The Bible from beginning to end is absolutely and uniformly opposed to it. "Let the wives be subject to their own husbands in everything:" this, and nothing else, is the uncompromising edict of Scripture.

What then is the practical remedy for this state of things? If the husband's dominion is not to be supported by those measures which the law used formerly to sanction, measures of personal coercion, which we are certainly not prepared to advocate in the present day, we can see only one alternative; and that is, separation. When matters arrive at a point which is beyond endurance, or beyond what can be tolerated consistently with the best interests of the family; then, not lightly, indeed; not capriciously; not without definite circumstances of justification; but still eventually, when the necessity does arise, then, even on such grounds as we have here indicated, we say a legal and judicial separation should be allowed. A man of firm purpose, and with an earnest sense of duty, will know what he ought to do, and will do it: though it must be confessed, if he is not a rich man, or if it is the woman herself who is aggrieved, they may probably find great difficulties thrown in their way: and these difficulties, therefore, on the ground of giving equal justice to all classes alike, we think ought to be considered and removed.

V. There are also several other matters bearing upon the question of moral and social expediency which will have to be taken into account before this question of separation is finally disposed of. Some of these points were discussed at the Social Science Congress last year, (1883,) at Huddersfield, when Mr. Davidson's very thoughtful and practical Paper was read to the meeting. As we shall have the opportunity of including this Paper at the end of the present Volume, we shall not detain our readers longer at present with discussions on this practical part of the subject. Our business in these pages has been chiefly to review the Scriptural facts in relation to the question; and especially to call attention to such facts as appear to be not generally understood, or not to have received that degree of attention which they deserve. And although it may probably be said that in the present day, the authority Scripture in these matters is practically very much diminished, is not recognised and received by any means in the same degree that it was in former ages, when the principles of marriage became incorporated in our legal system; yet it is to be hoped that these sacred writings have not yet entirely lost their influence in England. There is still a Church established among us which professes to take the Bible as the Word of God; and the Bishops of which still hold a position of high authority in the State and the Legislature. And the large and influential bodies of Nonconformists, though not acknowledging allegiance to this Established Church, yet the great majority of them do at least profess allegiance to the Bible, quite as earnestly as Churchmen themselves. But it is especially because our existing Marriage Laws, as we have before observed, have been originally derived from the Canon Laws of the Ancient Church, and have been adopted, enforced, and obeyed among us chiefly upon these grounds, namely as expressing the revealed Laws of God: therefore it is that we think this Scriptural view of the question is

important, and claims perhaps the first attention in any review of the whole subject. And if it should be found to be the case, as we think we have shown it to be, that in many respects these ancient laws have not been truly in accordance with the declarations of Scripture, but have in fact been perverted by the erroneous doctrines and ideas of those former ages, then it ought clearly to follow, that when these erroneous ideas are withdrawn, the laws which rest upon them should disappear also.

CHAPTER XIII.

We have considered these questions concerning the relations of Marriage hitherto chiefly from a religious point of view, and especially with reference to those principles which have come down to us from the laws and doctrines of the Church in former ages; and which have formed the basis,—and until recent years, the whole body,—of our own Common Law upon the subject. But there is also another important aspect in which these matters are to be looked at, namely as questions of State, questions of Civil Government, as affecting all the members of the community universally, whether belonging to the Church, believing in the principles of the Church, or not. It will be clear at once, when we consider this fact that the Church and the State are not absolutely co-ordinate and identical, do not stand upon the same foundation, and are not co-extensive in their range of action,—it will be clear that they must respectively view such questions as these in different lights, and deal with them on different principles.

I. Every Church or religious Community, as such, has a duty to perform to its own Members. It has received certain religious principles, articles of faith, or moral and practical principles, which it holds to be of importance in various degrees; some of them, matters of essential importance; others perhaps in a lower degree, but still not to be neglected. And it must naturally consider it to be its duty and its mission, in its corporate capacity, to inculcate these principles upon the members of its own body, and to enforce obedience to them, so far as may be necessary, by the exercise of spiritual discipline. And in the same spirit

in which St. Paul declared, Woe is unto me if I preach not the Gospel, it may often be inclined to take even the stricter view of any doubtful questions, rather than the laxer one; to insist upon what may be considered the higher forms of Christian life and faith, and not to be satisfied with anything that comes short thereof. Such, we know, has been the course adopted by the Christian Church in many periods of its history: and although perhaps it has sometimes erred by carrying this principle too far, especially in the various religious fraternities, which have imposed upon themselves strict rules of life beyond what is required by Scripture itself; yet it must be acknowledged that in many cases the men who first promoted these ideas were earnest men of high spiritual character themselves, and were actuated by the best of motives in their proceedings.

II. But the State has no such function to perform. The State has received no commission to preach any special tenets of religion; and it cannot, like the Church, confine its operations or its discipline to any one limited body, but must deal with the whole community, with every citizen and subject of the realm; and deal with them all on uniform and general principles. The business of the State is to provide justly and impartially, as far as possible, for the welfare of all: to repress vice and punish crimes; not so much from considerations of religion, not with a view to the spiritual and *future* welfare of men, but because these things are injurious to the *present* wellbeing of the community: to guard the personal rights of all, especially of the weaker members of society; for this indeed is one of the principal objects of social and civilised life, one of its chief advantages over the state of barbarism, in which the stronger man is able to oppress the weaker at his own arbitrary will. And it is a duty of the State which is now especially recognised in this Country, to guard the personal liberty of all its

members; especially their liberty of conscience; to see that every man is allowed not only to think for himself, to think what his own conscience prompts to him, but also to act up to the same, *to do* whatever his conscience dictates: provided only that his actions do not trespass on the liberty and the conscience of his neighbours.

III. And if this be the true function of the State, its duty must naturally be to take a liberal view of any religious questions; especially when religious principles are applied to regulate matters of civil and social liberty. If there is any particular doctrine or dogma which it becomes necessary for the State to deal with, and one which is the subject of much diversity of opinion, the State's duty must evidently be to lean rather to the wider and more open view, than to that which is more limited and strict: it ought not to adopt any prohibitive measures, unless upon very clear and positive grounds of religious or social necessity. This principle appears have been lately set forth very forcibly by one of the leading statesmen of Europe, Count Andrassy, in a speech of so much historical importance that we think it worth while to quote the following telegraphic summary, taken from the columns of the *Daily Telegraph*, Dec. 5, 1883—

> "Mixed Marriages.—Vienna, Dec. 4. A highly interesting debate took place at yesterday's sitting of the Hungarian Chamber of Magnates, in connexion with the Government Bill legalising the intermarriages of Christians and Jews. The measure was opposed by the Chambers of the Episcopacy, headed by the Primate, Cardinal Haynald. It was supported by M. Tisza and by Count Andrassy, who delivered an able speech expounding broad and liberal views on the question, which has made a deep impression both in Pesth and Vienna. Count Andrassy's arguments culminated in the conclusions that whereas the Church should be conservative, the Government ought to be liberal. Count Andrassy's brilliant address was enthusiastically applauded, and will probably secure the adoption of the Government Bill."

The result here anticipated, however, has not been arrived at yet, (April, 1884,) the influence of the Roman Hierarchy having been very strongly exerted in opposition to the Government.

IV. The principle here in question is one of great importance, and one that no doubt is gradually being developed amongst us; though certainly it is hardly understood or accepted as yet to its full and legitimate extent, even in our own Country. In former days, the idea that was aimed at was not merely the *union*, but the absolute *identity* of the Church and the State; that all the nation should be of one Religion, and that every individual should be bound by the doctrines and the principles of this Religion, as it was then understood: and this too, when these principles were held in their most rigorous form. Now we may admit that this idea was very good and praiseworthy in its original conception. Nothing that we can imagine of an earthly kingdom or commonwealth could be more admirable, more desirable, than this, that the whole community should be of one heart and mind in their religious principles, especially if those principles were really founded on the Truth. But practically there are at least two objections which seem fatal to the establishment of such a state of things; at any rate, fatal to its genuine continuance for anything beyond a very brief period.

(1.) First, in the present imperfect state of human knowledge, it is impossible that such a unity of religious sentiment should ever prevail universally, among any large body of persons, for any considerable length of time. The various questions of religion are too abstruse, too much removed beyond our absolute knowledge, to be determined with certainty, or so as to command universal concurrence and assent. Diversities of opinion *must* arise on many points, if men are free to think about them; as men certainly ought

to be, if the great gift of Reason is not to be abandoned or neglected. And men indeed *will* think about these things, those at least whose souls are in a state of real life and activity; though it may be that under certain circumstances, such as are only too well known to history, they may be hindered from *saying* freely what they think. And when this is the case,—as it must inevitably be where this uniformity of religious faith is imposed by external force,—then we have that unhappy conflict between Reason and Religion, or rather between Reason and religious dogmatism and tradition, which produces so much mischief to the cause of true Religion itself.

(2.) But there is another serious objection also to this unity of the Church and the State, whether real or artificial, which is perhaps not so generally understood or borne in mind as that which we have just stated. It is inevitably corrupting to the character of the Church herself. When the Church is identified with the temporal Power, and clothed with secular authority, it very soon loses the purity, simplicity and spirituality which originally belonged to it, and which are so essential to the fulfilling its true mission in the world. It acquires a position of worldly grandeur and pride; wealth, ease, and luxury; followed by covetousness, selfishness, and that which is so comprehensively called "worldliness,"—the very things it is sent to preach against and to denounce with all its might. This is a truth which may at first sight appear to some persons strange and remarkable; though a little candid reflection will probably show that it is the most natural and inevitable thing in the world: at any rate it is a truth which has been palpably exemplified by the Church's history in all periods of its existence. The Church of Christ was most pure and most faithful when it was most poor and most persecuted. The wealth of the Church of England at the present day, and especially of its chief Ministers, is a standing proof of their

disregard for the solemn lessons of their Divine Master, their want of faith in his promises, their want of sincerity in all they profess to teach. It is ruinous, it is fatal, to the efficiency of the Church itself.

In short, the kingdom of Christ is *not of this world*. The Church must be, and ought to be, a different Body from the State. It must exist within the State; it must endeavour as much as possible to leaven the State with its influence; but it can never be identical with the State until that day when the whole lump is leavened:—a day which has certainly not arrived yet, and which does not appear at this moment to be very rapidly approaching. And while such is the case, it is nothing but a delusive and dangerous mistake to set up a pretence of their identity. For the present, it is better that we should honestly recognise the fact that they are two distinct and different bodies, each having its own corporate existence, its own members, its own line of duty. Let Churchmen, on the one hand, hold their own doctrines, and enforce their own principles, so far as may be justly warranted by the words of Scripture, upon *their own members*, but not beyond: and let the various bodies of Nonconformists do likewise. Let the State, on the other hand, adopt such broad principles as may suit all the diversities of faith in the Country, or at least aim at this result as far as may be reasonable and practicable: but let it not endeavour to enforce any special tenets of faith or of practice, on the grounds of religion or of morality, except such as may be generally accepted and approved of.

V. The application of these elementary principles to several questions connected with the subject of marriage will be very obvious. One important and long debated question, which appears to be now on the eve of a final settlement, is that of marriage with a deceased wife's sister. This is held by many

of the leading divines of the Church of England, to be contrary to the law of God, as contained in Scripture: though we must observe indeed that the Scriptural argument for the prohibition is being gradually dropped out of sight, and that even those who oppose the measure appear to rely rather upon considerations of moral and social expediency. But at any rate, the Established Church herself, as represented by her Convocations, at the present moment does no doubt hold this particular union to be unlawful. If then this is the deliberate view of the Church of England, or if it is the view of the Roman Church, or of the Wesleyan body, or the Baptists, or any other religious community, let them by all means severally defend it within the pale of their own communion: let them refuse the special privileges of membership, or of Sacramental rites, to any persons who do not comply with this dogma, if they consider it absolutely necessary to do so; let them be faithful to the trust, to the commission given to them, within their own borders. This is their duty; but nothing beyond this. "For what have I to do, says the Apostle, to judge them also that are without?"

But the State must look upon the question from a very different point of view. If it were really the universal opinion of the Country that such unions were either unlawful, unscriptural, or even clearly prejudicial to the moral and social welfare of the community; if this general opinion were strongly held, not by a bare numerical majority, but by the whole people, with hardly any exception at all: then, so long as this was the case, the public Legislature would perhaps be justified in giving effect to the general sentiment by enforcing the prohibition. But nobody will pretend that this is the case at the present time. Without asking what might be the result of a general *plébiscite* of the country, it is enough to say that the measure has now been before Parliament for many years; and with numbers so nearly balanced—having indeed actually obtained a majority in its

favour last year (1883) in the House of Lords,—that nothing like any such universal feeling as we have here spoken of can now be urged against it. And it appears therefore to be clearly the duty of the State, even of those Members who do not personally approve of the measure, to concede the relaxation on public grounds, to the large numbers who demand it: to concede it as a matter of just religious liberty; a doctrinal matter in which the prohibition is at least so doubtful that no man has a right to force his own individual opinion on another man's conscience.

VI. And precisely the same thing may be said of these questions of Divorce. The present restrictions on this point have originated in that old tenet of the Church that the bond of marriage was indissoluble; and that it was made so by a divine law which was inviolable, without any exception. We have shown however, by abundant evidences from Scripture, that this law, though no doubt it was the *general rule*, was yet subject to numerous exceptions; and exceptions which are made with precisely the same weight of authority as belongs to the primary rule itself. This again therefore is so far an open and debateable question, that the State, as a Secular Power, cannot undertake to pronounce any authoritative decision upon it: so far as the question is of importance in a religious point of view, it must be left to every religious body, to be dealt with as a matter of their own internal discipline, and upon their own received principles. But the point with which the State is concerned is to guard against any practical mischief that might happen to the community at large, such as no doubt might be apprehended if the bond of marriage were too easily broken, and if anything like loose, licentious intercourse were sanctioned by public authority.

It will not be supposed from anything that we have said in the preceding pages, that we are here advocating any

course of action that can justly be charged with such a tendency as this. We have pointed out some special circumstances which clearly seem to require a greater liberty of separation than is conceded by the present state of the Law; and in some cases, not only a "judicial separation," such as is now available in the existing Court of Divorce, but a complete dissolution of the nuptial tie, such as would give to the aggrieved party the liberty of re-marriage. In one case particularly, that of the wife's desertion, we have shown even by the testimony of Ecclesiastical writers of high authority, that this liberty is really in accordance with the principles set forth in the Christian Scriptures themselves. And in any case we venture to say that when this liberty is seen to be required as a matter of justice, either to the husband or the wife, as a matter of necessity to the welfare of the family generally, there at least it should not be withheld by the State on the grounds of any religious theories to the contrary; especially of any dogmas so much open to controversy, so very questionable, as these which have hitherto prevailed on the subject.

VII. And finally, if there are any persons who fear that greater facilities of divorce, especially when accompanied by the liberty of re-marriage, would tend to lower the moral tone of society generally; to them we say with the utmost confidence, in the words of John Milton, that "Honest liberty is the greatest foe to dishonest licence." This is a principle which we have in several places seen to be upheld by the laws and precepts of Scripture: it is a principle which we maintain to be consistent with true religion and morality; it is dictated by common sense, and enforced by the numerous and striking lessons of history and experience: it is inculcated most plainly and most forcibly by the fundamental and unchangeable laws of Human Nature.

"Naturam expellas furcâ, tamen usque recurret."

To sum up, then, the principal points that we have insisted on in the foregoing pages, we say, first, that the subject requires immediate and urgent attention on account of the many serious evils existing under the present régime ;—evils of various kinds, many of which are well known and acknowledged, and many others which lie more deeply beneath the surface, and are more dangerous on that account.

(2.) That our present laws and popular sentiments on some points relating to Marriage are not truly in accordance with that authority on which they are professedly based, namely, the teaching of Scripture.

(3.) With regard to the question of Polygamy, although we do not advocate any general adoption of this practice,—especially among Englishmen,—yet we assert, as a matter of fact, that it is not condemned in principle or prohibited, even in the Gospel Writings : and therefore that in some particular cases, such as desertion, insanity, penal servitude, and perhaps some others, the injured party might properly be allowed to remarry, either with or without a formal divorce preceding. And furthermore, that, this practice not being condemned in the Bible, we ought not to condemn it, on religious grounds, in other nations or races of men who choose to allow it.

(4.) With regard to Divorce, we say that there is no positive law in the Bible which makes the bond of marriage indissoluble,—nothing more than strong personal exhortations to that effect. That this permanent union of man and wife cannot be justly insisted on as a Christian duty, except in a Church where the principles of Church Discipline are faithfully and effectually maintained ;—a condition which is grossly and manifestly wanting in the Church of England at the present time.

(5.) That the Church and the State have distinct duties and functions to perform in relation to these questions in which religious principles are involved : the Church to teach

and maintain its own doctrines and discipline among its own Members; the State not having any commission to teach or enforce religious dogmas, but only to maintain such fundamental principles of religion and morality as are generally accepted by the people, as being essential for the general welfare, and such as do not trespass on the due liberty of conscience of any individuals.

(6.) Above all things, we have insisted upon the necessity of dealing with this subject in a spirit of Truth. These great questions, difficult as they are, but affecting so deeply the lives and happiness of every member of the Community, MUST be grappled with in a spirit of earnestness, of thoroughness, of sincerity, of truth. We must not be satisfied to produce a mere superficial propriety or decorum in public manners, while we leave the root of the evil untouched. No doubt, there are strong prejudices and strong feelings existing in the public mind, some of which we have seen to be plainly inconsistent with the facts of Scripture: yet they are so strong that very many people are afraid to stand against them. But popular prejudice is a very unstable, ephemeral power, and can never be a safe foundation whereon to build a code of morals. Truth alone is permanent, is immovable. And for those especially who profess to speak as Ministers of the God of Truth, no duty can be more imperative than to show a strict, a fearless regard for this great principle.

APPENDIX.

THE

LAWS OF ENGLAND AND OF SCOTLAND

AS REGARDS

MARRIAGE AND DIVORCE,

THEIR ASSIMILATION AND REFORM.

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Being a Paper read at the Congress of the National Association for the Promotion of Social Science, held at Huddersfield, October 3rd to 10th, 1883.

I suppose it may be taken as admitted that it would be advantageous to both England and Scotland if the laws of these two countries as regards marriage and divorce were the same. This, of course, is different from saying that the laws of either of these two countries are perfect, and I would, therefore, propose to discuss the question of this paper on that basis, examining into the defects of each, and condemning them without admitting for a single instant the element of partiality for the one set of laws or for the other.

Before going further it would perhaps be well if I state shortly the law of England and of Scotland as regards marriage, and first as to the impediments to marriage.

Impediments to Marriage.—These are, with the following exceptions, almost practically the same in both countries.

It is only necessary to notice two important differences. 1. In Scotland a divorced person is prohibited by the Statute of 1600 from marrying the paramour on whose misconduct the decree of divorce is pronounced. Such a marriage is null and void. There is no such prohibition in the law of England. By the Roman law such a marriage was illegal, and the Church followed the law of Rome. But after the ninth Century certain modifications were introduced, and at last by rescript of Innocent III., the prohibition was limited to cases where the guilty parties had, during the existence of the first marriage, promised to marry each other. The rescript also prohibited marriage between the guilty parties where either had murdered the first spouse. The Courts and the General Assemblies of the Church in Scotland felt the difficulties of the question, and for long hesitated to decide it formally. However, in 1600, a statute set the question at rest, and the law as stated above is now the law of Scotland. The question whether this statute should be abolished, and the law on this point assimilated to that of England, has, especially of late years, been the subject of discussion among Scotch lawyers and Scotch writers, and it has been argued by one of these that the law is too harsh, that it has not, as a matter of fact, had the effect intended by its framers, and that it is inexpedient. He says the public good is not promoted by it, and the legitimacy of children is an element not to be left unconsidered, and then he proceeds in these words. "There are many unfortunates who, with miti-
"gating circumstances, ill-matched, ill-used, deserted,
"heart-broken, and bankrupt in legitimate affection, have
"offended against a law which to them was no longer a
"gracious gift, but a stern behest, a hard literal law. There
"are also many others who cannot be so excused, who have
"fallen very culpably through wantonness and caprice, but
"who yet may have within them the surviving elements of
"a comparatively virtuous restoration. But somewhere

" between the virtuous woman and the wretched class that " haunts our streets or that lives in private shame there are " steps of reformation that laws may assist." I cannot but feel that there is much force in the above words. If, on the other hand, it be said that the repeal of this statute removes a safeguard from the armoury of the weak and lessens the penalty of the wrongdoers, I would say in answer to the first of these objections that even if it be so—which the above writer seems to deny—it must not be forgotten that subsequent statutes have provided new safeguards—at least to the woman—in the shape of heavy penalties which did not exist at all under the old law; and in answer to the second I would say that there is an unwritten law of Society and of the family sufficiently crushing and sufficiently cruel —a law which this reform will leave in all its vigour, which acts both as a deterrent and as a punishment; and I cannot help being reminded that there is such a thing as a punishment being out of all proportion to a fault, that the statute blindly assumes the worst in every case, that it is deaf to the cries of repentance and remorse, and that in meting out a justice which is in no way tempered with mercy, it offends against the principle which guides and shapes the modern legislation both of England and of Scotland.

The next disability is one which I shall not discuss, because all the arguments for and against it are so well known. I shall only say that Lord Fraser, the greatest living authority on the Scotch Law of Marriage, has pointed out that the illegality of a marriage with a deceased wife's sister having been declared only on an *ex parte* application, the question " cannot be said to be yet set at rest " as regards Scotland, and I simply confine myself to recording my vote in favour of an assimilation of the laws of the two countries in the direction of the doubt expressed by Lord Fraser, with the hope and in the belief that this impediment will soon be removed.

There is a third impediment to marriage which I may as well notice here—that of non-residence—imposed by the statute for the prevention of Gretna Green marriages, which enacts that no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony is valid unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for the twenty-one days immediately preceding such marriage.

The next point is as to the mode of constituting marriage.

First as regards the law of England. By that law the contract of marriage may be lawfully entered into by the parties going through the marriage ceremony in a church before a duly ordained clergyman, and in presence of two witnesses, between the hours of 8 and 12 a.m.—this ceremony having been preceded by either the publication of banns upon three Sundays before the solemnization in the church or chapel of the parish in which each of the parties to the marriage shall dwell, or if the parties do not desire publication of banns, by virtue of a special or common licence—the former being granted by the Archbishop of Canterbury, and the latter by the ordinary of the place or his surrogate. The licence of the Archbishop of Canterbury requires no fixed period of residence, makes no restriction as to the hours, and may be celebrated at any place whether consecrated or not. The common licence is not to issue unless there has been fifteen days' residence by one of the parties in the parish in whose church or chapel the ceremony is to be performed. Nor is it to issue unless one of the parties makes oath (1) that there is no lawful impediment to the marriage, (2) as to the fact of the fifteen days' residence above described, (3) that where either party is under age and not a widow or a widower, the consent of the father, and, in some cases, failing him, of the mother or the

guardian, or (if none) of the Lord Chancellor has been obtained.

Second, of marriage by a Registrar's certificate with or without a licence. (1.) By Registrar's certificate with a licence. Notice of the intended marriage must be given to the Registrar of the district in which one of the parties shall have resided for fifteen days immediately preceding the notice. A copy of the notice is entered by the Registrar in the Marriage Notice Book for public reference without fee, and on making a declaration on said notice as to the fact of said residence, the absence of any legal impediment, and that the consents (as in the case of Surrogate's licence above described) have been obtained, the Registrar, if no valid objection be made, issues a certificate with licence to marry either in the registered building specified in the notice and certificate "according to such forms and ceremony as they may see fit to adopt," or in the Superintendent Registrar's office before another Registrar and witness. The marriage may be celebrated on the second day after the notice. (2.) By Registrar's certificate without a licence. In this case there must be the same notice and declaration to the Registrar, and the same entry in the Notice Book as just described, with this difference, that only seven days' residence instead of fifteen must precede the notice, and that it is required as to both parties instead of only one, and further, should they reside in different districts notices must be sent to the Registrars of both districts. A copy of the notice is then suspended in Registrar's office for twenty-one days, after which the certificate issues if no valid objection be made. All the above marriages must be celebrated between 8 a.m. and 12 noon [3 p. m.], and the licences expire in three months. Further, in some part of the marriage ceremony and in presence of the Registrar and the witness, each party shall declare ignorance of any lawful impediment to the marriage, and shall say each to the other "I call

upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)."

Scotch Marriages.—Marriages in Scotland are either regular, clandestine, or irregular.

I. *Regular Marriages.*—A marriage to be regular must be celebrated by a clergyman (of any denomination whatsoever), in presence of two witnesses, after proclamation of banns in the church of the parish or parishes in which the parties have their ordinary residence, or in which they shall have resided for the six weeks immediately preceding the proclamation. It is not necessary that the marriage should be celebrated in any church. It may be celebrated in a private house, and at any hour. If the parties do not desire to have banns proclaimed, they may instead give notice to the Registrar of the parish or district in which either shall have resided for fifteen days before such notice. This notice is published by being conspicuously posted on the door or outer wall of the Registrar's Office for seven days, and an entry is also made of the notice in a book called the Marriage Notice Book, which may be inspected by any one. At the end of the seven days the Registrar, if no valid objection be made, grants a certificate, which is now equivalent to the proclamation of banns.

II. *Clandestine Marriages.*—These are marriages, which, though celebrated by clergymen, have not been preceded by proclamation of banns, or by Registrar's publication. They are of equal validity with regular marriages, but the celebration entails certain statutory pains and penalties.

III. *Irregular Marriages.*—There are three modes of contracting such marriages.

1. By the serious unconditional *de præsenti* consent of the parties. This consent may be verbal or written, or inferred from facts.

2. The second mode of contracting an irregular marriage

is by a promise of marriage *subsequente copula*, the presumption being that, at the time of the copula, *de præsenti* consent was given. This presumption, however, is rebuttable by proof that at the time of the copula there was in fact no matrimonial consent on the part of the woman. The promise must be unconditional unless it can be purified before the copula. The promise is provable by the writing or oath of the defender, and may even be inferred from a correspondence, and it has been inferred from proclamation of banns, but not from mere courtship. To add to the uncertainty, it is a disputed question whether, even if proved, this mode of constituting marriages constitutes *verum matrimonium*. And indeed it would seem it does not do so in all cases, for it can only be established by an action brought in the lifetime of both parties. Moreover the law treats them as unmarried as regards their competency to give evidence, for until such action of declarator they are competent witnesses against each other as if they were strangers; nor would a subsequent promise to a third party followed by a copula found a prosecution for bigamy. In fact, it may be said to be a marriage *in pendente*, and depending on circumstances.

3. The third mode of contracting an irregular marriage is by habit and repute, coupled with matrimonial cohabitation. Perhaps the more correct way of stating the law would be to say that the fact of marriage is inferred from the cohabitation of the parties as man and wife. The cohabitation, though the period of its duration is not fixed by law, must be for some considerable time, and it must be of such a character as to distinguish it from an illicit connexion; and the repute must be general, not confined to a few persons, but known to the friends and relations of both parties, and furthermore it must be repute which is constant and unvarying.

It thus appears that both in England and Scotland mar-

riage is treated by the law as a contract which may be entered into either with or without the sanction of the Church or sect of the parties to it. No one is precluded from solemnising marriage according to the ceremonial of his or her particular Church.

Secondly. These provisions of the laws of both countries as to publication of banns, the necessity of the marriage being solemnised in a certain building, the entry in the notice book, the publication in the Registrar's office, the making the affidavit or declaration as to there being no lawful impediment to the marriage, and the obtaining the consent of parent or guardian, the prohibition against clergymen solemnising a marriage without banns or Registrar's publications—all these tend to secure the parties and their relatives against imprudent, improper, and unlawful alliances; and there are certain pains and penalties imposed for the neglect or breach of these provisions of the law, so that by the caution of officials and clergymen, and by the fear of punishment, the objects of the law are successfully achieved.

But it may be said, on the other hand, that there is an opposite danger which may result from these, and the parties might, from non-compliance with them, find their marriage was null, and that a door is opened to fraud and deceit. In Scotland that would not be the case; for, as *de præsenti* consent constitutes a valid marriage, the marriage would be binding if such consent was proved to have been interchanged, with or without forms, notices, ceremonies, or clergymen, and in any church or out of it, and at any time of the day, the only result of non-compliance with such of these provisions as are applicable to Scotland being that the marriage would be irregular instead of regular. But in England the case is different, though not so different as it appears at first sight. For example, though the English law directs, as we have seen, that there shall be certain consents, that the marriage shall take place in a certain building

—that it should be the usual place of worship of the parties —that there should be two witnesses present—that there should be certain periods of residence in certain places; still, if the marriage actually takes place, the breach of these provisions does not render it null—it is binding and effectual.

But there is a provision which *does* declare marriages to be null and void, in those cases where both the parties to the marriage knowingly and wilfully marry in an unauthorised place of worship, or without due and proper publication of banns or the proper licence, or shall knowingly and wilfully permit an unqualified person to solemnise their marriage. This law is very carefully worded. It is only when *both* the parties know they are acting irregularly, and wilfully persist in it, that nullity follows.

It can scarcely be said that in such cases the parties have any cause of complaint, except, perhaps, in cases like the following. Cases of hardship might arise with reference to misdescription of parties in the banns or licence, even when such irregularity *is* known to both. Such a case actually occurred. A man persuaded a woman to consent to such a misdescription by representing to her that the marriage would be valid notwithstanding such misdescription, and the marriage was held to be void. Strangely enough, it was the woman who thus took advantage of the law to get rid of her husband, and the husband opposed her application; but it might have been, and may be, otherwise, and the woman might find herself thrown off by the man, and without the status or rights of a wife. It is no doubt important that these descriptions should be correct, otherwise the object of the law would be defeated; but in protecting the possible interests of parents and others, it entirely ignores the interest of the innocent person deceived.

It is not altogether inexcusable for a girl to suppose that so long as she was actually married the mere alteration of her name would make no difference in the validity of the

marriage, and I think that the Court should, in deciding such cases, have the power to take into consideration the element of deceit, and if it be clearly proved that the woman was *de facto* entrapped into a connection which was really no marriage, and which was invalid by reason of such defects fraudulently created by the man, there should be no nullity, and the marriage should be declared valid.

In considering all these different provisions of the law of England, it appears that they secure most important advantages by insuring certainty, by providing and preserving proof, and by protecting to a great extent the interests of all concerned. They do this without occasioning any inconvenience which can reasonably be objected to. They operate in no way whatever in restraint of marriage, and (except in the last-mentioned case, and, perhaps, as to the restriction as to hours, which is inconvenient and unnecessary) breach of their provisions involves nullity only in those cases where the parties have both almost practically defied the law and have wilfully incurred the risk.

With the few slight alterations which I have suggested, I think the law ensures, as well as law can, all the advantages which can practically be expected of it, and with almost no danger. It remains to consider whether the absence of these provisions in the irregular marriages of Scotland is not attended with dangers which it is desirable to avoid.

As a matter of fact, the law of Scotland as to irregular marriages has produced amongst others these extraordinary results, as shown by actually reported cases. 1. That it affords facilities for seduction. 2. That it assists a designing person to entrap another into a marriage. 3. That without any deceit or fraud being practised by either party a man and a woman might surround their lives with a set of circumstances which neither of them at the time of their occurrence ever dreamed would constitute marriage, and which neither intended should constitute marriage, but

which may be afterwards used by one of them, or it may be after the death of both, by the children of the intercourse, for the purpose and with the effect of declaring that to be a lawful and binding marriage which never was one in fact.

It seems absurd that laws should be so fashioned that persons might enter into the most serious, the most important, the most binding and enduring of all contracts without being aware that they are contracting at all. It seems only reasonable that in a case which involves the status, the property of the parties and their children—the interests also of their respective families—the law should be clear, simple, and distinct, so that the parties should know without doubt what they are doing, and so that there should be no possibility of either mistake or deceit. To show how the results I have indicated are produced, let us take the case, for example, of a marriage by promise *subsequente copula*. How easy it would be for a man to tell a woman that by law these established a valid marriage, and at the same time to take very good care that there was not an atom of the evidence required by the Scotch law to prove the promise! Again, even if the most formal written proof were given by the man to the woman she might be deceived in the most cruel way by his making the promise a conditional one—for example, on the condition of her bearing a child. By Scotch law, if she trusts to this, even if a child is born, there is no marriage. The courts have held that the promise with all its conditions fulfilled must *precede* the connection. But further, suppose the man has given a promise in writing, and that promise is unconditional, and then proposes a trip across the border to Northumberland, or a run over, say from Glasgow to Ireland, and in either of these countries the marriage is consummated, it is nevertheless an invalid marriage by the Scotch law, because though the promise was lawfully and perfectly given in Scotland,

the consummation took place outwith Scotch territory. To add to all this uncertainty it has been laid down that this particular mode of irregular marriage does not constitute a true marriage unless it has been brought before the Court in the lifetime of the parties for the purpose of having it declared, so that even supposing all the above dangers had been avoided and there was easy and ample proof at hand, and there were children born, it would be in the power of the woman, perhaps for a consideration in money from the man, to stay her hand, and by doing so bastardise these children.

The argument brought forward in favour of this form of irregular marriage is that it protects the woman from the perfidy of the man who has induced her to surrender her person on the faith of a promise of marriage. But the instance I have given above (and there are others) show that instead of protecting woman the law is so easily evaded that it positively operates to her disadvantage by multiplying the dangers to which she is liable. The object of the law is no doubt good, but even if it be admitted that in some few cases it may operate beneficially, these are far more than counterbalanced by the innumerable dangers which I have pointed out, and which are created by and are a necessary result of this very law.

Again, take the second form of irregular marriage by simple consent. Here, too, an unscrupulous man has put into his hands the very means by which he can deceive the woman. He may tell her that a marriage is valid if they both consent, and that neither banns nor clergyman, nor registrar nor magistrate, is necessary, and he may even show her this in some law book, for it is true; but he may keep silent as to the necessity of providing and preserving evidence of the consent, and he might afterwards with impunity deny it and throw the woman off; who, without such proofs, would be helpless.

Take now the third mode of irregular marriage, that by cohabitation, and habit, and repute. There, deception is also easy. A man might (unknown to the woman who was trusting to this means of establishing her marriage) so divide the repute by telling several of his friends and relations privately that there was really no marriage existing or intended, and that the repute was allowed by him either for a blind or for convenience; and thus by raising a contrary repute, would entirely destroy the repute of marriage, and render it absolutely valueless to support a marriage.

Again, a clever and designing woman, dealing with perhaps a young boy of position and wealth, might so arrange matters by persuading him to give himself out as married to her, either on the pretext that it would be more convenient for them both, or for some other lighter reason, and assuring him that of course there was no marriage or idea of it, that he might be entrapped into an alliance which he never intended. If, then, we wish to avoid all these dangers, arising out of these three modes of irregular marriage, would it not be well so to frame the law that it should be clearly understood by all, that there are two and only two ways of contracting marriage—before a clergyman or a registrar? The woman will then insist on this, and be satisfied with nothing less. Both parties will know for a certainty that they have contracted a valid marriage, and, secondly, there will be clear and unimpeachable evidence of it, carefully preserved for the benefit of all the parties interested. I am, therefore, of opinion that the law of Scotland as to irregular marriages should be repealed, and I think this repeal would operate in restraint of seduction, false marriage, bigamy, the bastardising of children, endless litigations, and the diversion of property from the lawful owners.

Lastly, I shall allude only in a single sentence to that law of Scotland according to which children may be legitimated by the subsequent marriage of their parents. Though the

subject belongs strictly to legitimatism — to an effect of marriage, not to the mode of constituting it — I cannot refrain from bringing it under notice, because it seems to be a law which operates in favour of the innocent, and gives an opportunity, and holds out an inducement to undo a grievous wrong. But I should limit its application to this extent, that if there had been an intervening marriage, with issue of said intervening marriage surviving at the date of this subsequent marriage, it (the subsequent marriage) would only have the effect of legitimation, and in no way interfere with the property or money rights of the children of the intervening marriage.

Divorce.—Next, with reference to the *Law of Divorce* I think there is something which the English law might learn from the Scotch, and, secondly, I think there is much that might well and safely be added to both.

The principle which should be the test and guide in legislating on this subject, I would submit is this: that the law should provide a remedy for evils resulting from unfortunate marriages, where it can do so without sacrificing greater and more numerous interests.

Secondly, it should be borne in mind that, as a fact, marriage, though it is undoubtedly a personal contract, it is not *exclusively* personal. The one fact, that interests besides those of the contracting parties may be created by children being born of the marriage, proves this beyond all possible dispute. The parties are contracting under an implied condition that in their future intercourse and conduct the interests, feelings, and happiness of these third parties shall be attended to and considered as well as their own.

Thirdly, the sentiment, which is the subject-matter of the contract, may cease or die out with the termination of the contract by what is equivalent to death—in each and all of these cases without any fault on the part of the person seeking the remedy of Divorce. Bearing in mind these two

facts, I would propose to consider certain extensions of the law of Divorce, applying in each case these two tests:—

1. Does the proposal, though affording relief in special cases, injuriously affect the great majority of married people?

2. Does it unreasonably affect special interests which have a right to be considered?

I. DESERTION.—It appears to me that in cases of wilful and persistent desertion the law should provide an adequate remedy. By Scotch law a divorce is granted on proof of wilful desertion which shall have been persevered in for four years. The English law gives no such remedy. Yet here is a case of the greatest hardship: A woman, it may be shortly after her marriage, is abandoned, her whole happiness and her prospects and position seriously and painfully affected, she is slighted, treated with contemptuous silence and indifference—it may be, deprived of all means of living and (should the marriage have existed for years and there are children) she may be without food and clothes for her children—and yet the English law says it is a right and a proper thing that the man should be permitted to treat her in this way not only for four years, but until she has lost youth and hope, and it leaves her, without remedy, gradually to sink into her grave, her life ruined and wasted and her heart broken. But let us really see if the English law, in its endeavour to bind society together by making this contract all but indissoluble, is acting in the interests of that morality which it desires, and in the interests of that society for which the happiness of individuals is to be ruthlessly sacrificed.

We must bear in mind that there is such a factor as human nature, which has to be considered, and now-a-days we must bear it in mind more than ever.

There is such a thing as a bond which is too hard to bear, as a suffering whose tortures few of the best could bear,

and in such cases can we wonder at those who rise in rebellion against such unfeeling treatment, and crying out that "marriage was made for man, and not man for marriage," cast aside all restraints and openly defy the law? The law of England is unreasonable in this matter. It ignores facts; it refuses remedies where dire necessity, unanswerable reason, and expediency demand them, and by reason of its blindness and its harshness and its folly, it operates in such a manner as to defeat—and defeat with the most signal and complete success—the very object it professes to have in view. Nor must we forget that we are legislating not only for those upper and middle classes where there exist social and family restraints of a more or less powerful kind. We are dealing with the lower orders, with them especially, for it is more in their ranks than in our own that such cases of desertion occur, and it is in their case that poverty and wretchedness so frequently result. England might well take these lessons of experience to heart, and develop yet further that maxim of her law which says "that there shall be no wrong without its remedy;" and in following the far-seeing policy of those nations which have adopted this law, it will not only relieve innocent and helpless sufferers, but will establish more firmly the institution of marriage which such unreasonable and tyrannical laws have been gradually undermining; and I feel certain that denial of this and other similar reforms will, in these days of independent thought and action, go far to shake the institution of marriage to its foundation.

II. Penal Servitude.—With regard to divorce being granted in the case of a spouse being sentenced to penal servitude, I am strongly in favour of it, and especially when we consider that this incident is most frequently in those classes where the wife and family may be left without means of support.

The principle of the law should be that it will not bind

an innocent person down to a contract which the wrongful conduct of the other party to it has made it impossible for either of them to fulfil, and the fact that the wrongdoer has put himself or herself out of court, and that no harm is at all likely to result from granting such relief either to individuals or society at large, and the further fact that it is a law *as to which* there is no likelihood of its being abused—all these remove all obstacles and objections to this principle being applied. I am of opinion that where a spouse has been sentenced to penal servitude for five years or upwards the innocent party should be entitled to a divorce.

III. Insanity.—I pass on to another ground of divorce which requires more attention—I mean insanity. Of course, the peculiarity of this is that, unlike the preceding, it may arise from no fault of the person whose unfortunate position brings such painful and often disastrous consequences on the other. We have also to consider the nature of the insanity, and the possibility of its being only temporary. Here there should be the greatest care exercised, and over-caution rather than the reverse.

It is for this reason that I have come to the conclusion that the remedy of divorce should be restric ed to those cases where the insanity is proved to be absolutely incurable. That there are cases where this can be ascertained without doubt I am informed by medical authority. That there are others where a cure is doubtful, where doctors cannot tell, or where they altogether differ in opinion, is also true. These doubtful cases I would leave outwith the operation of the proposed law, and in the investigation of every case I should provide such a stringent and safe mode of procedure, such security against abuse, collusion, and deception, that there would be no possible danger to any of the parties concerned; and having so restricted the operation of the law, and so surrounded it with safeguards,

I should no longer hesitate to extend to the sufferers in such painful cases that relief to which they, as well as those in the previously mentioned classes, are entitled to receive from a law which claims to be founded on reason, on mercy, and expediency. The safeguards I would suggest are the following: First, all such cases should be dealt with by the Divorce Court, all minor Courts being without any jurisdiction to try such cases. Second, while the parties applying for a divorce would have the usual rights of proving their case, it should in no case be left entirely in their hands. The Court should not only have the power to call for what further evidence it might think necessary on all points, and as to all the surrounding circumstances of the case, but it should be the imperative duty of the Court—which it could in no case neglect—to take the evidence (on the point of the permanence of the insanity) of at least two experts chosen, not by the parties, nor even on their suggestion, but solely and exclusively by the Court. It should further be a disqualification as regards these experts that they were the doctors of an asylum, and, of course, therefore, not of the asylum in which the party could be resident. Each of the two doctors, after being put in possession of the facts, under the direction of the Court should separately visit the patient, and give to the Court a separate and independent report upon oath. With all these safeguards, and considering also that any specialist, of the standing of the doctors likely to be employed by the Court, would be very careful in giving an opinion of incurability which might be upset afterwards by recovery, to the destruction of that doctor's practice and reputation, there need be little fear of any abuse or miscarriage in the working of this law.

IV. Incompatibility.—I have had pressed upon me the desirability of considering before this meeting the extension of the operation of the Divorce Laws to cases other than those mentioned above, to those cases which have been

loosely classified under the head of Incompatibility of Temper. Sometimes the description is correct, sometimes not. For it is wonderful how easily a selfish or erring man or woman may be tempted to, and may with a little patience and skill actually *create* this incompatibility, when the simple fact is that he or she, instead of endeavouring to do their duty, would greatly prefer not to make the slightest effort in that direction, and to give themselves up to doing something which they ought not to do, and for which this alleged incompatibility is a mere pretext.

The rendering by one of the contracting parties to the other of that affection which is the origin and foundation of marriage, is liable to be influenced by causes which may be innocent or guilty. The maintenance of such affection may be supported and supplemented by the element of duty—duty to the person who has trusted her or his happiness to the other; duty to the children, and to all others interested. It has been, however, urged that one cannot control affection, that such affection may disappear without any fault, and that therefore it is unreasonable to legislate on the assumption that it is always in the power of the parties to this contract to fulfil this part of it. But this is not altogether true. Each of the parties have this in their power and under their control to a certain extent, and each may diminish or destroy such affection in themselves in a great variety of ways, not uncommonly by indulgence in foolish and unrestrained sentiment, by giving the reins to vanity, temper, and the hundred forms of selfishness. We know there are some who carry their ideas of reform on this subject to the fullest length, but with regard to some of their proposals I confess I can scarcely believe that they are made with the view of their being adopted, and with regard to others there is an absence of specification of statement as to the exact grounds on which the divorce is to proceed.

I am unable, for example, to accept as really meant the proposal which has been boldly stated that whenever one of the parties to the marriage ceases to have an affection for the other—it may be from no fault of the person who is the object of the dislike—the contract should cease and determine, and not only so, but in the case where the man regards his wife with the greatest affection, and has committed no fault, either grave or light, and desires that the union shall continue, the woman—whose dislike may be the result of anything, from a whim to an affection for another man—is to have the right, according to this proposal, on the simple assertion of her dislike, not only to walk out of her husband's house, but to demand, as of right, a settlement or allowance out of his funds, which she is to be at liberty to enjoy in the society of another man.

In dealing with this question it is better to avoid high-flown expressions on both sides. We don't get much nearer the practical question by talking of the dignity of marriage on the one hand, or of artificial slavery on the other. It is more to the point to look at human nature as we find it now, and have found it for centuries, and acknowledge and face the hard fact that both men and women if left to the freedom of their own will, if unrestrained by law in their conduct of the ordinary affairs of business life will, as a matter of fact, act in the most selfish, unjust, cruel, and inconsiderate manner; and it is in the face of such facts absolutely foolish to say in reply, as has been said, "Oh, if "men and women were trained (as they so easily might "be) to be even decently regardful of each other's feelings, "may we not assert positively that no such results could "possibly happen?" Until men are so trained, I fear the "positive assertion" is of no value, and legislation had better not assume its truth.

The question I ask is how are you to protect women against the easy and shameful abuse of such a law by men?

Are women prepared to take the risk of being cast aside, it may be on the early appearance of a rival, or it may be after years of happy married life when beauty begins to fade? Secondly, where will you find a man foolish enough to marry if it is in the power of a clever, unscrupulous woman to leave him and extort money from him in the fraudulent manner I have described? Once hold out inducements to cultivate incompatibility of temper, and it is wonderful how on every occasion and without the smallest excuse people, who wish to go and live with other men or women, will suddenly discover the existence of the most harassing, unendurable, and torturing incompatibility, and will use it to the destruction of their matrimonial happiness, which, without this temptation held out to them by this proposed law, would never have been disturbed. It is not that I do not acknowledge that there are cases of the greatest hardship where misery is entailed on both by the temper, selfishness, or self-will of one, or that I am blind to the possible effects on the morality of the parties in some cases under the present law, but that I am persuaded that if divorce were made competent on this ground such cases of misery would be increased. I do frankly admit that my contention involves this misfortune, that the few—though I believe the very few—must suffer for the many. With regard, therefore, to incompatibility pure and simple, I regard the remedy of divorce as too dangerous. But I would not leave the most cruel and distressing cases out of legislative consideration altogether, though my proposal would be chiefly preventive in its character. If a woman or a man could prove by abundant testimony of others that, with no substantial fault on the side of the complainant, the married life was rendered utterly wretched by studied insult, by neglect, sullen isolation, violent and frequent bursts of temper, defiance of all reasonable and kindly control; if utter and hopeless misery was brought about, not by

one but by a number of such causes, and if it were continuous for a year and without prospect of remedy, I think that a separation should be granted, with money penalties in all cases where it was possible—the children being entrusted to the custody of that spouse who had *not* been thus regardless of their happiness and interests. True, it is not all that can be desired, but it is I fear all that can be safely given, and the tendency of such a law would be to impose some degree of restraint on temper, selfishness, and unreasonable conduct, while the attempt to give the more complete remedy cannot stand the application of the test I ventured to suggest, for it would damage, instead of benefiting the great majority of the female population of these countries.

Drunkenness with Cruelty.—But there is one other class of cases where I think divorce should be granted. I mean cases where drunkenness is persistently indulged in by one of the spouses in such a way as to create what might be described as approaching to what the Divorce Law designates as "constructive cruelty." By this I do not, of course, mean that it would be enough to prove mere isolated cases of drunkenness, but a course of it persevered in for months, and which has the effect of bringing constant shame, and disgrace, and humiliation on the innocent party and on the children, before the household, the families, and the world, such in fact as would create private misery and public scandal. Nor, it is evident, would a remedial law be liable to abuse in such cases, and most surely it would be for the benefit of all concerned that a union surrounded with such disgusting incidents should be dissolved, and not merely separation, but absolute freedom granted to the sufferers.

The alteration and extensions, therefore, which I venture to suggest on the law of divorce are :—

1. Divorce on four years' wilful desertion.

2. Divorce in cases of incurable insanity.

3. Divorce in cases of penal servitude for five years and upwards.

4. Divorce in cases of persistent drunkenness, creating private misery and public scandal.

5. Judicial separation, with penalties wherever the infliction of these is possible, and with loss of the society and custody of the children, in cases of serious incompatibility, such as is described above.

JOHN R. DAVIDSON.

September, 1883.

NOTE

BY THE AUTHOR OF THE FOREGOING PAPER.

I AM glad to find that the subject of marriage and divorce is to be considered by a committee of the Social Science Association, because the fact of its being so considered seems to prove two things: *first*, that in the opinion of the Society the present law is not satisfactory; and *second*, that this opinion is so strongly and generally entertained that it is necessary the subject should be dealt with.

It is my conviction that action of this kind is absolutely necessary if we wish to support and maintain the institution of Marriage. Indeed, I have become acquainted with facts which force me to the conclusion that the opposition to the passing of the Deceased Wife's Sister's Bill has had the most powerful effect in creating a party, which has its representatives in every class and rank, who are acting, and are prepared to act, in defiance of the present law.

But the danger does not rest there, for we know that while many regard marriage as a sacred thing, there are thousands who, while they recognise the importance of maintaining the institution, look on it merely as a civil contract; and, as regards these last, the stability of the institution depends to a great extent on the support it receives from society, and the restraints imposed on the parties by public opinion. But if by denying relief, where reason, common sense, and expediency demand it, this party, which has been so created by the opposition to the Deceased Wife's Sister's Bill is increased in number and in power, then the inevitable consequence will follow, and we shall have innumerable cases of persons acting in defiance of the law.

At the present moment some of those who are doing so as regards the above prohibitory law are treated with respect, received into the best society, and receive, not the condemnation but the sympathy of their friends and relatives. People will equally extend their sympathy and protection to those who, in the cases referred to in the foregoing paper, are in a much worse condition than widowers, and their sisters-in-law, to those, viz., who are, contrary to all justice, reason, and necessity, actually suffering misery and positive mental torture under the present law.

Thus those opponents of reform, by creating this public opinion and this sympathy for breach of the present law, make it much more easy to defy the law, and have done much to deprive such breach of its social penalties. There is no reason why those who hold different opinions should alter their conduct, but with regard to those who claim an equal right to act in accordance with *their* opinions, modern events show that they *will* do so, and that they are receiving support in doing so.

It will, in fact, soon be regarded as a thing in no way disreputable to defy the law where it is so inconsiderate and unjust and contrary to reason. A counter institution—

without safeguards—will gradually encroach on the domain of marriage; will be to a great extent acknowledged as an institution, and the result will be that the whole body of the people—not merely the law-breakers—will suffer in consequence. There are no greater enemies to the institution of Marriage than those who oppose its reasonable reform.

I desire only to add that in the foregoing Paper several points have been purposely left untouched, chiefly because the Paper would, by the full discussion of these, have become too long for its purpose.

J. R. D.

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